

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.
AMD-04-029

WILLIE MITCHELL,
SHELTON HARRIS,
SHELLY WAYNE MARTIN,
SHAWN GARDNER,

Defendants

VOLUME XI OF XXXVII
Tuesday, October 7, 2008
Baltimore, Maryland

Before: Honorable Andre M. Davis, Judge
And a Jury

Appearances:

On Behalf of the Government:
Robert Harding, Esquire
Michael Hanlon, Esquire
On Behalf of Defendant Mitchell:
Laura Kelsey Rhodes, Esquire
Michael E. Lawlor, Esquire
On Behalf of Defendant Harris:
Gerard P. Martin, Esquire
Paul Flannery, Esquire
On Behalf of Defendant Martin:
Thomas L. Crowe, Esquire
James G. Pyne, Esquire
On Behalf of Defendant Gardner:
Adam H. Kurland, Esquire
Barry Coburn, Esquire

Reported by:
Mary M. Zajac, RPR
Room 5515, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

1 (Proceedings at 9:55 a.m.)

2 THE COURT: All the jurors have arrived. I understand
3 there was a parking problem this morning.

4 Mr. Coburn, thank you for your letter, which I have
5 received and reviewed, regarding that issue we discussed late
6 yesterday. And I'm prepared now to finalize my ruling. And my
7 ruling is that I will not permit counsel for Mr. Gardner to
8 introduce evidence that Mr. Gardner has been tried and convicted
9 and sentenced to life without parole for the Spence murder.

10 I understand that the defendants, other than Mr.
11 Gardner, have withdrawn their objections to the admissibility of
12 that evidence. Is that correct? And that would certainly have
13 been a factor and was indeed a factor that I considered, the
14 objections being withdrawn. The government, however, has not
15 withdrawn its objection.

16 MR. HANLON: That is correct, Your Honor.

17 THE COURT: All right. And so I'm ruling, as I am, for
18 the reasons I indicated on the record. I don't think I need to
19 elaborate in any great deal. But I do have to say on calm
20 reflection over the overnight recess, it does occur to me, and I
21 think I frankly exaggerated in my response to Mr. Hanlon when I
22 said that neither the government nor the Court can make these
23 decisions for the defendant.

24 The truth of the matter is, with Mr. Gardner's refusal
25 to join in this tactic, I believe the Court does have a

1 responsibility to insure that Mr. Gardner receives a fair trial,
2 not to trump counsel's professional and well-respected
3 professional judgments about such things. But the truth of the
4 matter is to do that would effectively plead Mr. Gardner guilty
5 to murder and essentially leave little for the jury to determine.

6 The little that the jury would have to determine
7 certainly is important -- the existence of an enterprise and Mr.
8 Gardner's motivation for that murder. But let's be perfectly
9 frank. It amounts to a guilty plea. And that's how the Court is
10 approaching this question.

11 And under circumstances such as this, with Mr. Gardner
12 refusing even to respond coherently to the Court's attempt to
13 question him about the matter, let alone what I gather is his
14 refusal to cooperate with counsel, although there have been some
15 discussions, he's got to make that decision.

16 So while I'm not burdening his right to testify at all,
17 he is free to testify or not testify, under the circumstances the
18 Court has a special responsibility to insure as much as is
19 humanly possible that Mr. Gardner receive a fair trial. And so
20 the Court will continue to make rulings intended to shield from
21 the jury the fact that Mr. Gardner has been tried and convicted
22 and sentenced for one of the murders which is charged in this, in
23 this case.

24 Now, what that means in effect, among other things, is
25 that to the extent, Mr. Coburn, you wish to cross examine Mr.

1 Montgomery and show to the jury that Mr. Montgomery previously
2 testified in front of a jury, that's a decision you're going to
3 have to make. The better practice, as we all know, is to simply
4 refer to a prior proceeding. And the Court will instruct the
5 jury, of course, as to the, that the jury is not to speculate and
6 so forth about what those prior proceedings were.

7 But I'm not prohibiting you from bringing out in front
8 of the jury that Mr. Montgomery testified in front of a jury
9 previously. Now, obviously, that entails certain risk because it
10 sort of gets you in the box of leaving open the inference to this
11 jury that maybe Mr. Gardner was tried and acquitted or there was
12 a mistrial. And you don't want that, of course. So you have to
13 make your own decision as to how you want to question Mr.
14 Montgomery.

15 But the Court's ruling is clear. There shall be no
16 evidence, argument, or speculation in front of the jury as to any
17 state murder proceedings involving any of the defendants in this
18 case. And specifically, there is to be no question whose intent
19 or effect is to show that Mr. Gardner has been convicted in state
20 court of the Jones-Spence murder.

21 So that's the Court's ruling.

22 MR. KURLAND: Your Honor, could I just briefly put some
23 comments on the record that I believe are necessary at this
24 point?

25 THE COURT: I can't imagine what's necessary, Mr.

1 Kurland.

2 MR. KURLAND: All right.

3 THE COURT: I heard you fully yesterday. All right.
4 We'll have the jury, please. And can Mr. Dobropolski be brought
5 down? Is he here?

6 MR. HARDING: Should be in the back, Your Honor.

7 THE COURT: All right.

8 MS. RHODES: Your Honor, Ms. Arrington, when she
9 returns, if we can move the screens because I can't see the
10 witness at all. Or do you want me to try and do it while --

11 THE COURT: Well, it's hard. The screen and the
12 microphone have to be sort of, you know, aligned. I'll have her
13 move it just an inch or so towards me, if that will help. Will
14 that help?

15 MS. RHODES: If he sat forward that would help.

16 THE COURT: Well, I can't make the witness sit in any
17 particular place, except in the chair.

18 MR. MARTIN: Your Honor, when I go to play the
19 transcript, when I go to play the tape, I have the transcript of
20 the tape, and I have copies for all the jurors or I can put it on
21 the DOAR.

22 THE COURT: Well, if you put it on DOAR -- well, no,
23 that will be kind of hard for you, won't it?

24 MR. MARTIN: Yeah, I'm afraid I'll be out of sync.

25 THE COURT: All right. You can hand out the

1 transcripts.

2 (Jury enters the courtroom.)

3 THE COURT: Good morning, ladies and gentlemen.

4 I understand the parking situation was pretty awful
5 Downtown today. That happens from time to time. We're ready to
6 continue. Mr. Dobropolski, you remain under oath, of course.
7 Whenever you're ready, Mr. Martin.

8 CONTINUED CROSS EXAMINATION

9 BY MR. MARTIN:

10 Q Thank you, Your Honor. Good morning, Mr. Dobropolski. Do
11 you remember yesterday, Mr. Dobropolski, when we left, you and I
12 were talking about how after you got out of prison in October of
13 2003 you were working with the detectives, Detective Giganti and
14 others? Do you recall that?

15 A Right.

16 Q And they were in charge of managing you as a cooperator, I
17 guess? Is that a good way to say it?

18 A Right.

19 Q With Detective Giganti. And who else was with him in doing
20 that?

21 A Danny Fife.

22 Q Was TFC Benson involved as well?

23 A Yes, he was.

24 Q Okay. And before you were sent out to talk to Mr. Harris,
25 they would talk with you and give you some suggestions as to how

1 you might engage him in conversation?

2 A I believe that's right.

3 Q So that you would have a conversation with them and, and
4 then they would offer suggestions to you as to how you might get
5 him to say what you were trying to get him to say, correct?

6 A Correct.

7 Q And they were the ones who placed these taping and recording
8 devices on you?

9 A Right.

10 Q Now, there were some occasions, weren't there, when they
11 placed more than one recording device on you?

12 A Yes.

13 Q And one of them was a transmitter, I guess? Did they
14 explain that to you?

15 A No. It was two devices.

16 Q Was it always two devices when you were going to have a
17 meeting with Mr. Harris?

18 A Yes.

19 Q And when they placed them on you, then they would test them
20 before they sent you out, wouldn't they?

21 A They would make sure they would actually turn on.

22 Q And made sure they were working, right?

23 A I think. I'm not, because it wasn't, weren't in the same
24 vehicle when they were doing this.

25 Q It wasn't the same what? I'm sorry. I didn't hear you.

1 A Weren't in the same vehicle. I was, I was with the
2 detective. Then you had another detective in other vehicles that
3 I guess --

4 Q So you were in different vehicles?

5 A That's right.

6 Q But you believe they were testing the devices before they
7 sent you in to met with Mr. Harris, to make sure they were
8 working, correct?

9 A I think they were. I'm not sure.

10 Q It would actually be pretty stupid if they didn't, wouldn't
11 it? You have to answer. You can say yes or no or you don't
12 know.

13 A I don't know.

14 Q Now, was it on every time you personally met with Mr. Harris
15 they had two of these devices on you?

16 A Yes.

17 Q Okay. And when they sent you to meet Mr. Harris, they told
18 you that they would have people watching you while this was
19 taking place, didn't they?

20 A Right.

21 Q And did they introduce you to the people who would be
22 watching you?

23 A No. Not all the time.

24 Q But you knew that from the time you got out of the car and
25 walked in to, let's say the first day was October 27th, was it

1 not?

2 A I think it was in October.

3 Q And that was at Parole and Probation.

4 A Yes.

5 Q All right. And the idea was you were to tell Mr. Harris
6 that you were there to see your probation officer, right?

7 A Right.

8 Q And you knew from the detectives that he would be there to
9 see his probation officer?

10 A Right.

11 Q And so this was a setup for you to meet him, right?

12 A Yes.

13 Q In fact, his meeting with his probation officer was
14 specifically arranged so that you could be there at the same
15 time, correct?

16 A Yes.

17 Q So they told you that people would be watching you from the
18 time you got out of the car and walked in, isn't that right?

19 A Right.

20 Q And they had people outside Probation and Parole and people
21 inside, correct?

22 A Yes.

23 Q And if you were to report on some odd thing that Mr. Harris
24 did, some odd movement that he may have made, then one of those
25 surveilling officers would have seen the same thing you saw,

1 correct?

2 A I assume so.

3 Q And so they watched you go in, they watched you while you
4 were in there, and they watched you when you came out, right?

5 A Yes.

6 Q Now, after you came out, they would talk to you, interview
7 you after you, after you -- let's take the meeting on October
8 27th. You went in to Parole and Probation. You found Mr.
9 Harris. You had a conversation with him. You were trying to
10 tape that conversation, correct?

11 A Right.

12 Q And you had a tape recorder that was turned on before you
13 went in, correct?

14 A Yep.

15 Q And you didn't turn it off, did you?

16 A No.

17 Q So it was on the whole time?

18 A Right.

19 Q And they were surveilling you, right?

20 A Right.

21 Q And then when you came out of Parole and Probation, you met
22 with Detective Giganti and others, correct?

23 A Yeah, right.

24 Q And they sat down and talked to you about what happened,
25 didn't they?

1 A Yes, they did.

2 Q And they would debrief you, asked you what went on in there
3 and who said what to whom, right?

4 A Right.

5 Q And you would tell them?

6 A Yes.

7 Q And at that point, that was what was freshest in your mind.
8 That conversation was right after you came out, correct?

9 A Correct.

10 Q And they took notes, didn't they?

11 A Yes, they did.

12 Q Okay. And sometimes when you had these meetings -- well,
13 strike that and let me start over. On October 27th you met with
14 him personally, correct?

15 A Yes.

16 Q Now, there was another day when you met with him personally
17 and we heard the tape of that yesterday, didn't we?

18 A Right.

19 Q Was that December 1?

20 A I'm not sure of the date.

21 Q But it was the tape we heard yesterday?

22 A I believe so.

23 Q Okay. And on both those occasions, you were wearing two
24 wires, correct?

25 A Yes.

1 Q And on both of those occasions, you were surveilled before
2 you went in, you were surveilled while you were in there, and you
3 were surveilled when you left, right?

4 A Yeah. But sometimes it was vehicles that were patrolling
5 like around Parole and Probation so it might have been a lapse
6 where they didn't actually see me. You know what I mean? They
7 might have two or three cars moving at the same time.

8 Q Were they always in a car or were they sometimes in the
9 crowd?

10 A Sometimes they were in the crowd.

11 Q You don't know where they were on any particular day? Just
12 that they were there, right?

13 A Right.

14 Q And so you've met with Mr. Harris personally on these two
15 occasions then?

16 A Right.

17 Q Was there a third occasion where you were wired up and met
18 with him?

19 A I was attempting to meet with him. But it never happened.

20 Q Okay. That -- I'm sorry. I interrupted you. Go ahead.
21 You were attempting to meet with him. That was on November 5th,
22 wasn't it? Do you recall that?

23 A I'm not sure of the dates.

24 Q You went down to somebody's house named Slow?

25 A Right.

1 Q And Slow was a person whose name Mr. Harris had given to
2 you?

3 A That's right.

4 Q And he gave you a phone number for Slow, right?

5 A Yes.

6 Q And the detectives traced that phone number to an address?

7 A Yes.

8 Q And then you went down to see Mr. Harris there, right?

9 A Mr. Harris wasn't there.

10 Q All right. You saw some woman. She identified herself as
11 Slow's sister?

12 A Correct.

13 Q All right. And they were videotaping that day, weren't
14 they?

15 A I'm not sure. I had the recorders on but I don't know.

16 Q You had the recorders on you?

17 A Right. I don't know if they were doing anything, any.

18 Q And that day when you went to meet with him, you actually
19 never personally met with him, did you?

20 A No. I spoke to him over the phone.

21 Q In fact, this woman who was Slow's sister called him on a
22 phone or got him on the phone and you talked to him on the phone
23 there?

24 A Right.

25 Q And then --

1 A Actually, her brother, Slow, did.

2 Q And then later on that day you talked to him on the phone,
3 right?

4 A Right.

5 Q Okay. Now, after these meetings on October 27th and on
6 December 1, 2003, they would debrief you and you would, you would
7 tell them what happened. And on some occasions you even wrote
8 down what happened. And you did it right away, right after the
9 meeting, correct?

10 A Yeah. Within about 45 minutes, half an hour.

11 Q And those were the notes that we were looking at yesterday
12 and that Mr. Harding was looking at with you as well?

13 A Yes.

14 MR. HARDING: Your Honor, I have to object to the dates
15 that Mr. Martin gave for those written statements.

16 THE COURT: Well, again, counsel's questions are not
17 evidence, ladies and gentlemen. It is the witness's answers to
18 counsel's questions that constitute the evidence. As you've seen
19 in this trial, sometimes the lawyer will go on for quite a bit of
20 time and then there's a question mark. And sometimes the witness
21 says yes, sometimes the witness says no. Sometimes the witness
22 says, I don't know. And there have been a few occasions when the
23 witness didn't say anything. I'm not talking about this witness
24 in particular, but I'm talking about all witnesses.

25 So your attention is on the witness' responses to

1 counsel's questions. So when counsel throw dates at a witness or
2 times or occasions or sequences or all of that, it's the witness'
3 answer that you are interested in. Go ahead, Mr. Martin.

4 BY MR. MARTIN:

5 Q Thank you, Your Honor. Just so there's no mistake. You
6 were shown yesterday notes that you wrote on December 1, 2003,
7 immediately after you had a personal meeting with Mr. Harris,
8 correct?

9 A Yeah. I believe that was the date.

10 Q And Detective Giganti asked you to write those notes,
11 correct?

12 A Right.

13 Q And then again, you have some notes that you wrote on
14 January the 8th, 2004, after a phone conversation with Mr.
15 Harris, correct?

16 A I might have. If you show it to me I'll let you know.

17 Q Okay. We'll get to that. I'm just asking you some general
18 questions.

19 In general, all I said is sometimes you wrote down
20 after a meeting what occurred at the meeting, correct?

21 A Right.

22 Q Other times you simply told Detective Giganti or others what
23 had happened, correct?

24 A I think for the most part I wrote it down. I'm not 100%
25 sure.

1 Q Okay. You always spoke to Detective Giganti after the
2 meeting, though, right?

3 A Right.

4 Q And he always debriefed you, correct?

5 A And I think usually I would write, write things down. I'm
6 not sure if it was every time, but I know it was the majority of
7 the time. I'm not 100% sure.

8 Q Well, do you know if you wrote anything down on October
9 27th?

10 A I don't know.

11 Q Mr. Harding? Do you have notes for October 27th?

12 MR. HARDING: Judge, the government has disclosed to
13 all defense counsel all of the discovery in this case, including
14 all possible statements of witnesses.

15 THE COURT: Thank you, Mr. Harding.

16 BY MR. MARTIN:

17 Q All right. So if I don't have notes for October 27th, then
18 you didn't write it down, did you?

19 A Probably not.

20 Q Now, you had a chance, after you taped Mr. Harris, to listen
21 to these tapes?

22 A No.

23 Q So they never let you listen to them?

24 A No.

25 Q Never went over any of these tapes with you?

1 A No.

2 Q Detective Giganti didn't and Mr. Harding didn't, correct?

3 A No.

4 Q All right. And did anybody ever tell you about the tapes?
5 Anybody ever tell you whether they were successful or not?

6 A I think the only mention was, as far as the tapes were
7 concerned, was that Mr. Harris speaks real low and they had to
8 listen to it themselves or something. So I'm not sure if the
9 tape was clear enough or if it came out or something like that.
10 But I remember they made mention that Mr. Harris speaks very low.

11 Q So your understanding from the detectives was, was that
12 these efforts that you were making to tape him were not turning
13 out to be successful, is that right?

14 A That wasn't my understanding. My understanding was Mr.
15 Harris speaks low. It was just, I don't know. It was kind of
16 said. It wasn't like, you know, I sat down, went over these
17 tapes, yeah, like we had a problem hearing his voice because he
18 speaks soft.

19 Q All right. And you listened to that tape yesterday, didn't
20 you?

21 A Right.

22 Q And except for a very few lines in that tape, you couldn't
23 hear anything, could you?

24 A That's right. Hear traffic and --

25 Q You couldn't hear but you couldn't understand it, is what I

1 meant, right?

2 A Yeah.

3 Q Okay. Now, but you, you ever listen to any of the telephone
4 tapes? Any of the conversations of the tape?

5 A I heard them but I didn't sit down and listen to them.

6 Q They were pretty clear, weren't they?

7 A Yeah. It was -- right. The recording was --

8 Q Right there?

9 A -- right in front of me. Exactly.

10 Q So you didn't have all that interference from people sitting
11 next to you and all the people in the crowd at Parole and
12 Probation, correct?

13 A That's right.

14 Q Okay. Now, bear with me for a second, Your Honor. In the
15 efforts that you made to record him, are you aware of a single
16 statement that got recorded where you could hear Mr. Harris
17 admitting that he killed Woody?

18 A He confirmed it. He didn't admit on tape. I mean, he
19 confirmed.

20 Q He confirmed it how? In the tape we listened to yesterday?

21 A Right.

22 Q Okay. Let's talk about that. That was December 1, 2003,
23 correct? And what you did that day was, your goal was to trick
24 him into an admission that he killed Woody, isn't that right?

25 A Sort of, yeah.

1 Q And by doing that, you told him that you had spoken to
2 someone else who had claimed to have killed Woody, correct?

3 A Yup.

4 Q And you say, you've testified that he responded by saying,
5 "he tried to claim my work", correct?

6 A Right.

7 Q And after this taping session, after you came out of it and
8 you spoke to Detective Giganti, he debriefed you about that
9 session, didn't he?

10 A Sure.

11 Q And did you tell Detective Giganti that what Mr. Harris said
12 is, "Someone is trying to claim my shit?"

13 A I believe so, yeah.

14 Q So either way, whether it's, he's trying to claim my work,
15 or someone's trying to claim my shit, as far as you're concerned
16 it's the same thing, right?

17 A Basically the same thing, right.

18 Q And then when we listened to the tape yesterday, what we
19 heard is Mr. Harris saying, "He's trying to claim that?" Isn't
20 that right?

21 A I can't remember the tape word for word.

22 Q That's fine. If you don't remember, you don't remember.

23 A Don't remember.

24 Q And that's the day, December 1, when, one of the days when
25 you were being surveilled before you went in, while you were in

1 there at Parole and Probation, and when you came out, right?

2 A Right.

3 Q And that's the day that, Mr. Harris, when he came out,
4 walked over to the trash can and took his, his weapon. I guess
5 it was a --

6 A Box cutter.

7 Q Box cutter?

8 A Um-hum.

9 Q One of those things that a blade slides out?

10 A Right.

11 Q Took his weapon out, right? You saw him do that?

12 A Right.

13 Q Now, that particular tape, are you aware -- well, you
14 listened to it so you know how it turned out. You can understand
15 very little on it, is that right?

16 A Yeah.

17 Q Is that a fair representation of the tape?

18 A Fair.

19 Q Now, what you were told by Detective Giganti or others was
20 not that the body wires, as we'll call them, those devices you
21 were wearing, not that they didn't turn out, but that because Mr.
22 Harris speaks so low you couldn't understand what he was saying,
23 right?

24 A Right.

25 Q And those conditions didn't apply, however, to your

1 knowledge, to those telephone conversations you were having,
2 isn't that right?

3 A Right.

4 Q And you never got any admissions on those phone
5 conversations, did you?

6 A No. I think, when I was having the phone conversation, I
7 was attempting to set up another meeting with Mr. Harris, to
8 engage him in --

9 Q And you spent a lot of time trying to -- I'm sorry to
10 interrupt you. To engage him in what?

11 A Go ahead.

12 Q To engage?

13 A Try to engage him in more conversation about the murders.

14 Q Okay. Fair enough.

15 A Phone conversation, we were just setting up another meeting.

16 Q So during this process, you knew that if you were talking to
17 him on the phone, you were going to get a clear recording, didn't
18 you?

19 A I assumed they were all clear, to be honest with you.

20 Q But you knew that the phone recordings, from having listened
21 to them, were clear, didn't you?

22 A Right.

23 Q And you didn't get any admissions. But let me ask you this.
24 On January the 8th, you had a conversation with Mr. Harris and
25 you claim that Mr. Harris told you that he was interested in

1 robbing people? You told Detective Giganti that, didn't you?

2 A Might have.

3 Q Well, if I show you a report that was written by Detective
4 Giganti.

5 A Okay.

6 Q Assuming I can find it. But it's here somewhere.

7 THE COURT: Mr. Martin, I don't know that you need to
8 show it to him. He says he might have. And if you want to
9 represent to the witness.

10 Q I will represent to the witness that Detective Giganti wrote
11 a report in which he said you told him that Mr. Harris told you
12 that he was interested in robbing people. Do you accept that?

13 A Yes.

14 Q And he told you that on a taped telephone conversation, did
15 he not?

16 A I'm not sure but that --

17 Q Well, Detective Giganti --

18 THE COURT: The witness wasn't finished answering the
19 question.

20 Q You're not sure what?

21 A I'm not sure. But robbing, robbing other drug dealers is
22 what I was using to attempt to get him to meet with me again. He
23 mentioned it the first time at Parole and Probation. Actually,
24 it was one of the first things he said. Something we spoke about
25 at Central Booking. He said, what's up with the Ecstasy dealer

1 out in Delaware?

2 Q Let me read to you --

3 THE COURT: Sir, remove your cap, please. Thank you.

4 Q Let me read to you what Detective Giganti wrote. It's the
5 DEA-6 from 1/9/2004, Mr. Harding.

6 MR. HARDING: Objection.

7 THE COURT: Sustained.

8 Q So your testimony is, then, that you might have told him
9 that Harris was interested in robbing people, correct?

10 A More than likely I did.

11 Q And the conversations that you had on the telephone with Mr.
12 Harris were all recorded, were they not?

13 A Yes.

14 Q So if he told you that, and we could listen to the tape and
15 you would hear on that tape Mr. Harris saying he's interested in
16 robbing people, correct?

17 A I assume so. I'm just confused with the dates because I
18 don't know what was said on what date. But if they have a
19 transcript of it.

20 Q Detective Giganti has told us --

21 MR. HARDING: Objection.

22 THE COURT: Sustained.

23 Q If Detective Giganti wrote a report that says --

24 MR. HARDING: Objection.

25 Q -- he taped you on that day --

1 THE COURT: The objection is sustained.

2 Q Your Honor, then I'll just call Detective Giganti because I
3 have the report right here. That's what it says.

4 MR. HARDING: Objection.

5 MR. MARTIN: Could I have N-40, please? Your Honor, we
6 have a tape that was made on January the 8th.

7 THE COURT: All right.

8 MR. MARTIN: Received from the government. Telephone
9 call. Mr. Flannery is going to play it for the jury.

10 THE COURT: How long is it, Mr. Martin?

11 MR. MARTIN: Your Honor, it's about three minutes long.

12 THE COURT: Okay. Is this one you have a transcript
13 for?

14 MR. MARTIN: No, Your Honor.

15 THE COURT: Okay.

16 MR. MARTIN: I'll tell the Court, I'll make the
17 proffer, it's the only tape of all the telephone tapes.

18 THE COURT: Okay. All right. Go ahead, you can play
19 it. No objection.

20 (Tape playing.)

21 BY MR. MARTIN:

22 Q Mr. Dobropolski, did you hear anything at all on that tape?

23 A No, I didn't.

24 THE COURT: Mr. Martin, can you pull the mike a little
25 closer to you, please?

1 Q Yes, Your Honor. I think that was put there for people who
2 were doing the things this morning before court.

3 THE COURT: All right. Let me make sure we're all
4 following this. The record will reflect that Mr. Flannery, Mr.
5 Martin's co-counsel, sitting at trial table, using his laptop,
6 activated something. And we all heard coming through the sound
7 system here in the courtroom a low roar. If anybody else wants
8 to offer a better description, I'm happy to have you do that.

9 MR. MARTIN: That's fine, Your Honor.

10 THE COURT: For, I don't know, a minute or two. And
11 that's represented as what, Mr. Martin?

12 MR. MARTIN: It was represented to us as a taped
13 telephone conversation between Mr. Dobropolski and Mr. Harris on
14 January the 8th, 2004.

15 THE COURT: Okay. All right.

16 MR. MARTIN: It's Government's Exhibit MB-42, Your
17 Honor.

18 THE COURT: All right. Great. Thank you.

19 BY MR. MARTIN:

20 Q Now, you also wrote notes that day, didn't you, Mr.
21 Dobropolski?

22 A I might have.

23 Q Let me put something on the DOAR here and ask you if these
24 are your notes from that particular day. You see the date there?
25 1/8/04?

1 A Yes.

2 Q It says you called Mr. Harris, correct?

3 A Yep.

4 Q You asked Mr. Harris if he would meet with you, correct?

5 A Yes.

6 Q He agreed to meet with you, didn't he?

7 A Yes.

8 Q And you were going to meet him at the subway at Mount Claire
9 Junction?

10 A Yes.

11 Q All right. And you asked him what he's been up to and he
12 told you he was up to nothing, correct?

13 A Yes.

14 Q And you added, of course, that meant that he was not
15 hustling, correct?

16 A Right.

17 Q But what he told you was, what are you up to, and the answer
18 was nothing, right?

19 A Correct.

20 Q And he told you he was on welfare, didn't he?

21 A That's what he said.

22 Q And then you claim that you told Mr. Harris that you have a
23 robbery set up, correct?

24 A Right.

25 Q And it's important that you be able to get a hold of him,

1 correct?

2 A Sure.

3 Q And that you wanted to get a hold of him at the time the
4 robbery was to happen, correct?

5 A Right.

6 Q And you gave him your phone number, right?

7 A Right.

8 Q And Mr. Harris's response was what? I'm playing Play
9 Station?

10 THE COURT: You need to push it up, Mr. Martin.

11 Q I'm sorry.

12 THE COURT: That's all right.

13 A That's what I wrote.

14 Q So in other words, his response to your request to rob
15 somebody is to tell that you he was playing Mortal Kombat on Play
16 Station II?

17 A Um-hum.

18 Q And he also explained to you that it might be hard for him
19 to find transportation to any meeting with you, right?

20 A Yeah. For are meeting, I think, in particular.

21 Q And you said you would try to find him a ride?

22 A Right.

23 Q Now, Mr. Dobropolski, is it fair to say that in all these
24 attempts that you were making to get together with Mr. Harris
25 that he was ignoring you?

1 A No.

2 Q He never, he never met with you after that, did he?

3 A No, he didn't. We scheduled another meeting date and, I
4 think it might have been the following day, for the following day
5 or the day after.

6 Q And his, his --

7 MR. HARDING: Objection. I don't think the witness --

8 MR. MARTIN: I think he was finished, Your Honor.

9 THE COURT: I thought he was. Were you finished, Mr.
10 Dobropolski?

11 THE WITNESS: No.

12 THE COURT: All right. Go ahead.

13 THE WITNESS: We were scheduling another meeting date,
14 I think for the following day or the day after. But the whole
15 thing started like when I first met him at Parole and Probation.
16 The first thing he said to me was something about the Ecstasy
17 dealer, trying to rob him. And on the tape that we listened to
18 yesterday, you really can't hear it but that's one of the things
19 we were discussing.

20 BY MR. MARTIN:

21 Q You can't hear it, correct?

22 A You can't hear it. But that's why I was using the whole
23 robbery thing to set up another meeting with him. He kept
24 explaining he was having problems finding a ride. And I offered
25 to find him a ride. I think it was that Friday, maybe during

1 that week, that he was arrested.

2 Q So over a period of, let's say November, December, a couple
3 weeks in January, he told you on at least a half a dozen
4 occasions that he couldn't get a ride, right?

5 A I don't think it was that many times. I think it was really
6 with this phone conversation.

7 Q You think it was only once on that phone conversation that
8 he told you he couldn't get a ride?

9 A I'm not sure. I know he didn't have transportation. So I
10 mean, he would have to find a ride. He may have said it a couple
11 times. I'm not 100%.

12 Q With all of the police officers working with you --

13 A Right.

14 Q -- you could have gotten a car and gone to get him, couldn't
15 you?

16 A They didn't want that to happen.

17 Q You could have gotten a car and gotten to him if they had
18 wanted it to happen, couldn't you?

19 A Sure. But there's a reason they didn't want that to happen.

20 Q You could have, though, couldn't you?

21 A I could have went and saw him myself, and they didn't want
22 that to happen, either.

23 Q You could have gone to see him and they could have
24 surveilled you, correct?

25 A Right. But there was a reason they didn't want that to

1 happen.

2 Q Didn't happen, did it?

3 A No, it didn't.

4 Q Okay. Now, you called Mr. Harris on November 3rd and
5 November 5th and you couldn't get him, is that right?

6 A There was a couple occasions I couldn't get in touch with
7 him.

8 Q And then the one time you actually went to see him at Slow's
9 house. And you couldn't get him there and you got him on the
10 phone instead, right?

11 A Right.

12 Q Okay. Now, when you, the day that you got him on the phone,
13 I suggest to you it was, I believe there's a report of November
14 the 11th, 2003. You actually got him on the phone after, later
15 the same day where she put you on the phone with him when you
16 were at her house, at Slow's house?

17 A Right.

18 Q Later that day, you and he talked on the phone?

19 A Yes.

20 Q Correct?

21 A Um-hum.

22 Q And if we could have N-28 playing. What government exhibit
23 number is that? It looks like MB-40D, Your Honor, would be the
24 government exhibit. MB-40D?

25 THE COURT: Very well.

1 Q I'm relying on Mr. Flannery to be right about that.

2 THE COURT: Right.

3 (Tape played.)

4 BY MR. MARTIN:

5 Q Mr. Dobropolski, that telephone tape was pretty clear,
6 wasn't it?

7 A Yes.

8 Q Compared to some of the others that we've heard, right?

9 A Right.

10 Q And you have him, actually have him on the topic of Bo still
11 being locked up, for, I think, what Mr. Harris said, was, quote,
12 "the same shit", unquote?

13 A Right.

14 Q And you say that he told you he was going to bet that rap,
15 correct?

16 A Right.

17 Q And Mr. Harris said, well, he's still fighting, right?

18 A Right.

19 Q He didn't say anything else about it, did he?

20 A Nope.

21 Q And you didn't take that opportunity to bring up what Mr.
22 Harris had told you, what you say he told you in the prison, did
23 you? You could have done it right then, couldn't you?

24 A What Mr. Harris told me in prison? What are you exactly
25 talking? What he told me --

1 Q The story that you told about Mr. Harris and Bo having
2 committed this murder of Woody. You didn't take the opportunity
3 to bring it up there, did you?

4 A Not over the phone, no.

5 Q Pardon me?

6 A Not over the phone. It wouldn't have been right.

7 Q Over the phone it wouldn't have been right?

8 A Nah.

9 Q It would have been a lot clearer, though, wouldn't it?

10 A Yeah. It might have thrown some red flags and prevented me
11 from getting it later.

12 Q But that was the perfect opportunity for you to say
13 something about it, wasn't it?

14 A It wasn't perfect. Not in my view, it wasn't.

15 Q So on these taped conversations, you never mentioned,
16 because you didn't think it was the right place to do it, this
17 so-called double homicide, did you?

18 A No.

19 Q Just so I'm clear, Mr. Dobropolski. When you testified in
20 the grand jury on October the 14th, 2003? Does that sound right?
21 November the 14th, November the 14th, 2003. When you testified
22 there, what you testified about was what information that you say
23 you got from Mr. Harris and Mr. Mitchell, correct?

24 A Right. I think it was the 19th, wasn't it?

25 Q Whatever it is. The 19th or the 14th. I don't have it in

1 front of me. But it was in November, correct?

2 A Right.

3 Q Okay. And everything that you testified about in there is
4 information that you got from Mr. Harris and Mr. Mitchell and not
5 from anybody else, correct?

6 A I believe that's right.

7 Q And everything you've testified here today you say is
8 information you got from Mr. Harris and Mr. Mitchell and not from
9 anybody else, correct?

10 A Right.

11 Q Thank you, Mr. Dobropolski.

12 A You're welcome.

13 THE COURT: Would you like some water, Mr. Dobropolski?

14 THE WITNESS: No, I'm fine.

15 CROSS EXAMINATION

16 BY MR. LAWLOR:

17 Q Sir, good morning.

18 A Good morning.

19 Q Do I understand your testimony to be that when you were
20 incarcerated, you were known to be some sort of an enforcer?

21 A Right.

22 Q Okay. And is that the truth, that's what you fashioned
23 yourself as? This wasn't just chatter on the tier. This is
24 person that you were, an enforcer?

25 A Well, that's, the original Homicide detective kind of

1 labeled me as that.

2 Q I'm not concerned with what other people labeled you. I'm
3 concerned with what you are, who you are. So my question to you
4 is, was that what you did on the street, enforce for drug
5 traffickers?

6 A I collected money for people, yeah.

7 Q Okay. Have you ever described yourself in the grand jury,
8 say, or in a statement you gave to detectives as an enforcer?
9 Not a debt collect or, but as an enforcer?

10 A Right.

11 Q You have characterized yourself as such?

12 A Yes.

13 Q Okay. And that's because that's the truth? In the times,
14 in the infrequent times that you weren't in jail, you enforced
15 for drug traffickers?

16 A Right.

17 Q Okay. And who were these folks?

18 A Drug dealers. Anybody.

19 Q Who?

20 A Several of them.

21 Q Okay. Do these several of them have names?

22 A Yes, they do.

23 Q Would you please provide them to me?

24 A Paul Kratsis.

25 Q Pardon me?

1 A Paul Kratsis.

2 Q Paul Kratsis?

3 A Yes.

4 Q Okay. Where does he reside?

5 A I think Lewisburg. He has life and 30.

6 Q You're going to have to speak more clearly.

7 A I think he's in Lewisburg.

8 Q Okay. He's doing sometime in jail now currently?

9 A Right.

10 Q Where was he residing when you were enforcing for him?

11 A South Baltimore.

12 Q All right. Who else?

13 A Kenneth Dovell.

14 Q Pardon me?

15 A Kenneth Dovell.

16 Q Okay. Where did Mr. Dovell reside when you were enforcing
17 for him?

18 A Southwest Baltimore.

19 Q All right. Anyone else?

20 A They were the main two.

21 Q Main two. But there was some others you maybe did a little
22 contract work for?

23 A Anybody. Nobody I can give you the names to.

24 Q All right. Just can't remember now? So these other folks,
25 they may or may not be in jail or may or may not be in South

1 Baltimore now?

2 A That's right.

3 Q No one you want to incriminate while you sit here today,
4 right?

5 A That's right.

6 Q All right. So enforcing, what do we do? How do we enforce
7 for a drug dealer? What does that involve?

8 A It involves somebody who owes some money, they ask me to go
9 collect it.

10 Q All right. And in what fashion do you go collect it?

11 A I can go ask.

12 Q You go ask. Sir, I've been sent by Mr. Kravitz, I
13 understand that you owe him a debt, may I have it, please?

14 A That's it.

15 Q That's it? And they fork over the money to you because of
16 your charming disposition?

17 A That's right.

18 MR. HARDING: Objection.

19 Q Okay. How old are you, sir?

20 THE COURT: Overruled.

21 Q How old are you?

22 A 37.

23 Q How tall are you?

24 A Five-ten.

25 Q How much do you weigh?

1 A 170.

2 Q All right. You've been in jail the better part of your
3 life?

4 A That's right.

5 Q Three hots and a cot?

6 A Yep.

7 Q What else do you do while you're locked up?

8 A Lift weights.

9 Q So you're a pretty big guy?

10 A I'll all right.

11 Q Pretty tough guy?

12 A Some say so.

13 Q All right. Some of your ex-girlfriends would say so, right?

14 A Right.

15 MR. HARDING: Objection.

16 THE COURT: Sustained.

17 Q All right. So on the occasion when your charming
18 disposition --

19 MR. HARDING: Objection.

20 Q Does not entice a debtor to give their money over you, what
21 other means do you use to get that money?

22 MR. HARDING: Objection.

23 THE COURT: Overruled. You may answer.

24 Q Pardon?

25 A All I have to do is ask them.

1 Q All you have to do is ask?

2 A That's right.

3 Q Wow. You must be pretty tough?

4 A Yup.

5 MR. HARDING: Objection.

6 THE COURT: Sustained.

7 Q So how many times have you had --

8 THE COURT: Put your questions properly, Mr. Lawlor.

9 Q Yes, sir. How often have you had to undertake this task of
10 debt collecting for drug traffickers?

11 A I don't know.

12 Q Give me a ballpark.

13 A Couldn't count.

14 Q More than ten?

15 A Yes.

16 Q More than 20?

17 A Yep.

18 Q More than 30?

19 A Probably.

20 Q More than 50?

21 A I doubt it.

22 Q Between 30 and 50?

23 A Right.

24 Q Okay. So on 30 to 50 times you enforced or collected a debt
25 for a drug trafficker, and on each of those occasions you asked

1 for money from the individual politely, according to you, and it
2 was turned over to you?

3 A Most of the time.

4 Q All right. What percentage of the time was that manner
5 effective?

6 A A majority of the time.

7 Q All right. So there was a minority of the time where we had
8 to resort to other means?

9 A Yup. Physical altercations.

10 Q All right. Here we go. Now we're getting to the rub. What
11 did those physical -- how did you characterize that?

12 A Physical altercations.

13 Q All right. What did that physical altercation involve?

14 A A fight.

15 Q Whaling on someone's face with your fists?

16 A Yep.

17 Q All right. Breaking a few ribs?

18 A Could.

19 Q All right. You use a gun?

20 A No.

21 Q Carry a gun?

22 A Have I ever carried a gun?

23 Q When you were enforcing or debt collecting or whatever it is
24 you would like to characterize it as, did you carry a gun?

25 A No, I didn't.

1 Q All right. Have you sold drugs?

2 A Yes, I have.

3 Q All right. And you work for drug dealers?

4 A Right.

5 Q And I trust, then, that you're familiar with how the game
6 works?

7 A Yep.

8 Q So you're probably aware of the fact that drug dealers carry
9 guns?

10 A Right.

11 Q All right. So even though you're five-ten and 170 and you
12 got your jail house muscles, you were never concerned that when
13 you went to collect a debt from someone they might have a gun?

14 A Nope. Because the majority of the time I knew the people
15 that owed it.

16 Q And they didn't carry guns?

17 A Nope.

18 Q All right. So you never needed to carry a gun?

19 A Nope.

20 Q All right. So by the time you got to jail, you're saying
21 that on the tier your reputation was as a tough guy?

22 A That's it.

23 Q All right. Now, let me ask you a question. Mr. Martin made
24 reference to the fact that you've spent the majority of your
25 adult life incarcerated, is that right?

1 A Yep.

2 Q All right. And it sounds like, without getting into the
3 specifics, that you just, you've been convicted of many crimes?

4 A Right.

5 Q All right. And when you're released, you're released to
6 either probation or parole?

7 A Right.

8 Q And you've had not much success obeying the conditions of
9 either probation or parole?

10 A That's right.

11 Q Which leads to re-incarceration?

12 A That's right.

13 Q And you use drugs?

14 A Right.

15 Q And when you're on probation or parole you're required to,
16 number one, report to an officer, correct?

17 A Yep.

18 Q And number two, provide urine samples?

19 A Correct.

20 Q To determine whether or not you're refraining from the use
21 of drugs, right?

22 A That's correct.

23 Q Because that's always a condition of your probation or
24 parole?

25 A Yeah, for the -- not all the time. Yeah.

1 Q Most of the time?

2 A Most of the time, yeah.

3 Q And it sounds like you haven't had much success either
4 reporting or providing clean urine, right?

5 A That's right.

6 Q All right. And therefore, you've been unable to stay out of
7 jail?

8 A Right.

9 Q All right. So now the conversations that you've relayed to
10 the jury that you purportedly had with Mr. Harris took place in
11 August of 2002, right?

12 A That's right.

13 Q At the Central Booking Facility, at jail, pretrial facility
14 here in the City of Baltimore and the State of Maryland, right?

15 A Yep.

16 Q All right. And you were incarcerated. And this is off of
17 the eight year sentence you were serving in bits and pieces,
18 right?

19 A Right.

20 Q An eight year sentence you got for domestic violence?

21 A Right.

22 Q For beating a woman?

23 A Right.

24 Q Okay. Not the only time you've done that, though, right?

25 A No.

1 Q All right. Let me ask you this question. How many times
2 have you been convicted of a crime?

3 A I have no idea.

4 Q Roughly.

5 A 20. 25.

6 Q Twenty times?

7 A Yeah.

8 Q All right. Let me ask you this question. In order to get
9 convicted 20 times, how many crimes do you need to commit to get
10 convicted that many times?

11 A No. Well, they're plea agreements. Cop out to six charges,
12 we'll throw four out. I'm trying to think of how many
13 convictions I have. It's not like separate cases.

14 Q All right. How many separate occasions?

15 A I still don't know. It's a lot.

16 Q Give me a ballpark for that one.

17 A Can't tell you. Maybe 10, 12.

18 Q Maybe ten? Is ten a fair estimate in your mind of the
19 number of times you've been to court and entered a guilty plea to
20 some crime or crimes?

21 A About 10, in between 10 and 15.

22 Q All right. Between 10 and 15. Now, my question is, when
23 you go before a judge and you say, I've committed the crime of
24 beating my girlfriend or stealing someone's car or selling drugs
25 or pounding on someone's face, you need to have committed that

1 act, right?

2 A Not all the time. I just sometimes think it's better
3 because it's a whole rack of charges. They offer me a good deal,
4 I just take it.

5 Q All right. My point is, though, typically you've committed
6 some act that violates the laws of society and man in order to
7 put yourself before the judge in the first place?

8 A That's right.

9 Q All right. And you need to have been arrested in order to
10 find yourself in this predicament?

11 A That's right.

12 Q And every time you've committed a crime in your life, that
13 has not resulted in either an arrest or a conviction, right?
14 You're not that unlucky, are you?

15 A No.

16 Q Okay. So here we go. Here's my question. How many crimes
17 do you need to commit in order to end up with 10 to 15
18 convictions?

19 MR. HARDING: Objection.

20 THE COURT: Sustained.

21 Q All right. Let me ask you this. In the five years
22 preceding August of 2002, how much time had you spent on the
23 street?

24 A Maybe four years, five years.

25 Q You sure about that? You spent -- let me ask you the

1 question again.

2 A From time I was when? 18?

3 Q No, no, no. Let me ask the question again. In the five
4 years preceding 2002 --

5 A Right.

6 Q -- the time period of 1997 to 2002, over those five years
7 how much time had you spent on the street?

8 A I'm not sure. Maybe a couple years.

9 Q Two out of five?

10 A Something like that maybe.

11 Q Could be less, though, right?

12 A Right.

13 Q Could be a lot less, right?

14 A Could be.

15 Q Because even as we sit here today in 2008, over a period of
16 20 years, you've only spent under five of those on the street,
17 right?

18 A I guess.

19 Q All right. Well, don't guess.

20 A Well, I don't know about today.

21 Q This is your life. You must know.

22 MR. HARDING: Objection.

23 A I mean, if you got the answer, tell me.

24 Q No, no. I don't have the answer. I want to know if you
25 have the answer.

1 A And I'm telling you I don't know.

2 Q All right. You don't know how much time you spent on the
3 street in the last 20 years?

4 A That's right.

5 Q All right. But --

6 A Maybe five, six.

7 Q But you're going to accept my representation it's less than
8 five years?

9 A If that's --

10 THE COURT: The witness said five to six.

11 Q Okay. It's five to six, and that's your recollection?

12 A Right.

13 Q And some of that time, though, was after you worked out this
14 deal with the detectives in order to go and make these
15 unintelligible recordings of Mr. Harris, right?

16 A Right.

17 Q Okay. And how much time was that out of the five to six
18 years? About eight months?

19 A Maybe.

20 Q Okay.

21 A I think.

22 Q So notwithstanding the fact that you've been in jail the
23 majority of your life as of August of 2002, you still had a big
24 rep at the, at Central Booking for being an enforcer?

25 A Right.

1 Q Okay.

2 A Being able to fight.

3 Q Pardon me?

4 A For being able to fight real well.

5 Q Being able to fight real well?

6 A Most of the people that were on that tier were in prison
7 with me.

8 Q Fight like not Marcus of Queensbury, but fight in jail with
9 your fists?

10 A That's right.

11 Q In jail or out of jail?

12 A In jail and out of jail.

13 Q All right. Now, is this a reputation that you earned inside
14 the jail from fighting inside the jail?

15 A Outside and inside.

16 Q All right. So you would be in prison, still fighting with
17 the other inmates?

18 A Right.

19 Q All right. Now, let's talk about -- you're at Central
20 Booking in August of '02?

21 A Right.

22 Q How many inmates there?

23 A I don't know.

24 Q Roughly?

25 THE COURT: Mr. Lawlor, please be careful with the

1 water around the equipment.

2 Q I won't spill.

3 A I guess 40 or 50 on each side.

4 Q How many?

5 A Maybe 40 or 50.

6 Q 40 or 50 total inmates in all of Central Booking?

7 A No, I'm saying on my tier. I don't know how many at Central
8 Booking.

9 Q All right. How many tiers there are?

10 A A lot.

11 Q All right. Lot of tiers, lot of inmates. All right. We
12 won't worry about the number. A lot of men are in jail?

13 A That's right.

14 Q Okay. And sadly, most of these men are there for having
15 committed crimes?

16 A Right.

17 Q Right? Baltimore City's a tough place, right?

18 A Either way.

19 Q I can't understand you. Yes or no?

20 A Either way.

21 Q Do you agree?

22 A I have no idea. I don't know --

23 Q You live here. Do you agree with that proposition?

24 A I don't know what somebody's in jail for, if they did or
25 didn't do it.

1 Q That wasn't the question. Do you understand Baltimore City
2 to be a tough place? The city itself?

3 A It can be.

4 Q Can be. Right? A lot of drug trafficking. Too much drug
5 trafficking, right?

6 A That's right.

7 Q A lot of murders, right?

8 A Yep.

9 Q Okay. But you've got this big rep as a fighter, right?

10 A Um-hum.

11 Q All right. And is this something that, that you earned on
12 the tier by spreading your own rep or this was something that
13 just accrued to you because you're so known?

14 A Yeah. That's about right.

15 Q Which?

16 A I'm known. I'm known in prison for fighting and I'm known
17 on the street for fighting.

18 Q Okay. But you don't carry a gun?

19 A Nope.

20 Q Never killed anyone?

21 A Nope.

22 Q Just beat a few people with your fists?

23 A That's right.

24 Q Which was the minority of the occasion, though, right?

25 MR. HARDING: Objection.

1 THE COURT: Rephrase the question.

2 Q All right. Didn't you tell us that of the 30 to 50 times
3 you had to enforce for someone or collect a debt, your charming
4 disposition and your salesmanship had made someone turn over
5 their cash to you without the need for physical force? Didn't
6 you say that?

7 A I'm talking --

8 MR. HARDING: Objection. Objection.

9 THE COURT: The objection is overruled. You can answer
10 and explain, Mr. Dobropolski.

11 A I'm talking about in general, barroom fights, fights on
12 corners. Like you said, Baltimore is a tough place.

13 Q All right. So you, your testimony is that the Central
14 Booking facility and the City of Baltimore --

15 A Right.

16 Q -- you've got a big time rep because you're a barroom
17 brawler?

18 A Known for being able to fight.

19 Q That's your testimony? Pardon me?

20 A Known for being able to fight very well.

21 Q Okay. All right. Now, you were in a tier with Mr. Harris?

22 A Right.

23 Q You were on the tier with him and --

24 A In the cell.

25 Q -- in the cell with him?

1 A Right.

2 Q Okay. And your testimony was, either when being questioned
3 by Mr. Harding or Mr. Martin, I forget whom, that Mr. Harris had
4 not heard of you, that you had a rep in general, but that Mr.
5 Harris had not heard of you? Am I summarizing your prior
6 testimony?

7 A Had not heard of me?

8 Q Had not.

9 A He had heard of me before I got there.

10 Q Harris had. Okay. But Mr. Mitchell had not, right? He
11 only heard of you through an introduction --

12 A Through Mr. Harris.

13 Q Pardon me?

14 A Through Mr. Harris, right.

15 Q All right. So Mr. Mitchell had never heard of you?

16 A Right.

17 Q All right. And you'd never heard of him?

18 A Nope.

19 Q And you weren't in a cell with him?

20 A No, I wasn't.

21 Q All right. So you talked to -- obviously, you lived in a
22 cell 24/7 with Mr. Harris, right?

23 A That's right.

24 Q So you get to chitchatting about things?

25 A Yep.

1 Q All right. And according to you, your testimony is that he
2 disclosed to you about this homicide in some detail, right?

3 A Right.

4 Q And we have your testimony and your testimony alone that on
5 top of disclosing this information to you, he also said that Bo
6 essentially put him up to this?

7 MR. HARDING: Objection.

8 THE COURT: Overruled. You may answer.

9 MR. HARDING: Objection as to "his testimony alone",
10 Your Honor.

11 THE COURT: The jury has been told repeatedly,
12 counsel's questions are not evidence.

13 THE WITNESS: Right.

14 BY MR. LAWLOR:

15 Q All right. You say that Mr. Harris told you that he
16 committed this crime by his own hand, correct?

17 A Correct.

18 Q With the assistance of no one, correct?

19 A Assistance of Bo. He said he gave him the gun.

20 Q Gave him the gun, all right. But as he was physically
21 present in this vehicle, according to you, he was on his own?

22 A Correct.

23 Q All right. And according to you, Mr. Harris told you that
24 Bo gave him a gun and induced him to commit this crime? That's
25 your testimony. That's what Mr. Harris told you, right?

1 A Um-hum.

2 Q All right. And now you did not, were you even on the same
3 tier as Bo?

4 A I was on the same floor but different, he was on the other
5 side. Like the only time I would see him is rec time.

6 Q All right. How often was rec time?

7 A Once every other day.

8 Q And this was out in the yard of some sort?

9 A Right.

10 Q And how many inmates would be out on the yard during rec
11 time at any given time?

12 A Maybe 30.

13 Q All right.

14 A 20 to 30.

15 Q And how many times, you only talked to Bo like two times,
16 right?

17 A Right.

18 Q All right. And the first time was sort of, how's the
19 weather, did you catch the Ravens game, unimportant things of
20 that ilk, right?

21 A Right.

22 Q No confessions to murder that time?

23 A Nope.

24 Q All right. But then, the second time he's ever seen you,
25 you don't know him, he doesn't know you. Because of your

1 reputation as a tough barroom thug, your testimony is, in this
2 courtroom under oath, that Mr. Mitchell confessed to you to a
3 homicide?

4 A Told me he put work in, yes, that's right.

5 Q Put work in, which you took to mean he committed homicides?

6 A That's what we were discussing at the time, right.

7 Q All right. Who else was around to hear this jailhouse
8 confession?

9 A Myself and Mr. Mitchell.

10 Q Just the two of you?

11 A That's right. Standing off to the side.

12 Q Wow. Too bad we don't have anyone else who can corroborate
13 that, huh?

14 MR. HARDING: Objection.

15 THE COURT: Sustained.

16 Q All right. Now, Mr. Martin said that -- if you could
17 clarify something for me. That when you originally went to
18 discuss this with the police, you didn't know the name of the
19 male victim, right?

20 A No.

21 Q All right. But later you were able to provide that
22 information?

23 A That's right.

24 Q Which means, I assume, that someone provided that
25 information to you?

1 A Yeah.

2 Q Not Mr. Harris nor Mr. Mitchell?

3 A No.

4 Q A member of the law enforcement community?

5 A Do I remember the law enforcement community? What do you
6 mean?

7 Q What was that information provided to you by a member of the
8 law enforcement community?

9 A I think it was mentioned, and that's how I got the name.

10 Q I didn't understand that.

11 A I think it was mentioned while they were actually
12 interviewing me.

13 Q By whom?

14 A I think Tommy Mallin and --

15 Q All right. Whatever salient details were provided --

16 THE COURT: Let him finish the answer.

17 Q I'm sorry.

18 A Detective Niedermeier and Tommy Mallin.

19 Q Did Detective Niedermeier or any of these other officers
20 provide you with other salient details about the story that
21 you're telling today?

22 A No.

23 Q No? All right. Where did you go after you left Central
24 Booking?

25 A JI building. City Jail.

1 Q All right. Entirely separate facility?

2 A That's right.

3 Q After August of 2002, how much longer were you at Central
4 Booking?

5 A Maybe another couple weeks. Week or so, something.

6 Q All right. Who left first? Yourself or Mr. Harris?

7 A Mr. Harris went. I went like a week after him, I think.

8 Q All right. But Mr. Mitchell was still there?

9 A Yep.

10 Q But he refrained from disclosing to you other criminal
11 activities he committed during that week you were both there?

12 A After the last time we had a conversation, I think it was
13 maybe the following day or the day after, I was transferred to
14 JI. So he was still in Central Booking, I was in another part of
15 the jail.

16 Q All right. And how long were you in -- is JI part of the B
17 triple C, Baltimore City Correctional facility?

18 A Steel side.

19 Q Pardon me?

20 A It's the older part of City Jail. Central Booking is the
21 newer.

22 Q All right. But it's a separate facility from Central
23 Booking but it's part of the City Jail. All right. So you were
24 there for how long?

25 A I think maybe another few weeks.

1 Q All right. And then where did you go?

2 A Baltimore County Detention Center.

3 Q How long were you there for?

4 A I think two weeks.

5 Q And then where did you go?

6 A I was given my eight year sentence back and I went to WCI,
7 Washington Correctional Facility.

8 Q All right. And how long were you at WCI for?

9 A I'm not really sure.

10 Q All right. It was at WCI that your conscience got the
11 better of you and you decided to come forth with this
12 information, right?

13 A No. As soon as he told me, I was thinking about it.

14 Q All right. But your conscience didn't overwhelm you to come
15 forward with this information until you're at WCI, right?

16 A That's when I actually wrote the letter, WCI.

17 Q All right. So that was about, that was in May. You first
18 wrote a letter in May to the judge, right?

19 A I think it was May.

20 Q And these conversations purportedly occurred in August,
21 right?

22 A Yep.

23 Q And so it was nine months later that you wrote the letter?

24 A Right.

25 Q At which time you remained incarcerated?

1 A Yes.

2 Q You remained incarcerated at several different facilities?

3 A Well, yeah.

4 Q Talking to other inmates during those nine months?

5 A Right.

6 Q Having several different cell mates?

7 A Sure.

8 Q Being exposed to the word on the street?

9 A Not concerning this.

10 Q No? All right. So while you're in jail for these nine
11 months, do you and your other inmates discuss the affairs of the
12 World Bank or do you discuss other criminal endeavors?

13 MR. HARDING: Objection.

14 THE COURT: Sustained.

15 Q What do you discuss with your other inmates while you're
16 incarcerated?

17 A Anything.

18 Q Such as?

19 A Sports, whatever. I mean, it could be anything. General
20 conversation like I would have with someone on the street.

21 Q All right. Criminal activity?

22 A That, yeah. Sometimes, right.

23 Q Court's indulgence, please.

24 (Pause in Proceedings.)

25 Q I'm sorry. I got distracted there for a minute. You talk

1 about other criminal activities, though, right?

2 A Right.

3 Q Okay. And so ultimately you decided, though, to write a
4 letter to --

5 A Judge Byrnes.

6 Q Judge Byrnes.

7 A Right.

8 Q Okay. And then there was no follow-up? You didn't hear
9 anything on that?

10 A Nope.

11 Q You wrote a second letter?

12 A Yes, I did.

13 Q And that was in September?

14 A Yeah.

15 Q Okay.

16 A Same year.

17 Q Forgive me for skipping around. You mentioned that you were
18 provided by Detective Niedermeier the fact that Woody was the
19 name of the male victim?

20 A I think he was discussing it with Detective Mallin.

21 Q Okay. So was this a conversation about what happened, to
22 whom it happened, too? What happened?

23 A No. Actually, I was given the photo arrays, whatever, and I
24 told them what I knew, this and that. And I think they were
25 discussing something about the name "Woody" or whatever, with one

1 of the victims.

2 Q You're saying the other law enforcement officers were, in
3 your presence, discussing some of the facts of the crime?

4 A Not the facts of the crime. The name of the person.

5 Q All right. Well, I assume the conversation was more than,
6 Woody got shot, right? It had to be some context, I assume.

7 A I really can't remember. I don't think it was anything
8 major. It's just when he said "Woody", it stuck out to me
9 because I know a dude named Woody.

10 Q So nothing major like maybe other than the name of the
11 victim who got shot first, something like that, a minor detail?

12 A No.

13 Q No? Nothing like that?

14 A No, and I --

15 Q Definitely not. You remember that clearly, right?

16 A That's right.

17 MR. HARDING: I think the witness was answering.

18 Q Pardon me. Go ahead.

19 A And I remember asking him if Woody had gold teeth and
20 dreads, and he said he couldn't tell me that because it could
21 disturb anything that I might know. He didn't want to influence
22 anything I know or distort anything I might know.

23 Q Okay. So the only detail you were provided with, and your
24 memory of this is clear, is the name of the male victim?

25 A Right.

1 Q Okay. Now, I got to, forgive me because I think Mr. Martin
2 asked you about this but I'm not clear about it. You wrote two
3 letters to Judge Byrnes and then the detectives came to get you?

4 A Right.

5 Q And this is the first you'd heard about the fact that they
6 were going to interview you?

7 A Right.

8 Q All right. And notwithstanding the fact that you wanted to
9 speak to one detective and one detective only, other detectives
10 showed up?

11 A Right.

12 Q And this is out in Cumberland, right?

13 A Right.

14 Q So they picked you up from the facility and brought you to
15 the police barracks in Cumberland, Maryland?

16 A That's right.

17 Q Which is like two, two and half hours west of here?

18 A I assume.

19 Q Okay. Give or take?

20 A Right.

21 Q All right. And notwithstanding that you'd never talked to
22 them, they already had some photo spreads they wanted you to look
23 at?

24 A Right.

25 Q All right. Of Mr. Harris and Mr. Mitchell?

1 A Right.

2 Q All right. That's very prescient of them, don't you think?

3 MR. HARDING: Objection.

4 THE COURT: Sustained.

5 Q Now, you spoke with them and you agreed to become a
6 cooperating witness. All right. Now, in order to do this, they
7 needed to effectuate your release, though, right?

8 A Right.

9 Q Now, you were released from the eight year sentence for
10 domestic violence that you were serving, right?

11 A Right.

12 Q But you were still on probation?

13 A Modified my sentence to put me on probation.

14 Q Okay. So you got the benefit of being released but you
15 still had to be on probation?

16 A Right.

17 Q All right. And you had -- how many meetings did you have,
18 how many meetings did you have with Mr. Harris?

19 A Two meetings and a handful of phone calls.

20 Q All right. And part of the conditions of your probation
21 were to report to your officer and refrain from the use of drugs?

22 A Right.

23 Q All right. Now, I don't want to be critical, but it sounds
24 to me like you have a drug problem.

25 A That's correct.

1 Q An addiction?

2 A Right.

3 Q And you had attempted to address this issue by going to
4 Second Genesis, right?

5 A 2001, right.

6 Q All right. Which is a rehab center, right?

7 A Right.

8 Q To use some sort of loose vernacular. And that, I assume,
9 is not the only time you had been in rehab?

10 A Sure. I was --

11 Q So you were released in 2003 to aid with the investigation,
12 right?

13 A Right.

14 Q And you were put on probation, right?

15 A Right.

16 Q And you were ordered as a condition of your probation to
17 report to your officer, right?

18 A Right.

19 Q Amongst other conditions. And refrain from the use of
20 drugs?

21 A Right.

22 Q All right. And you, I assume, were having regular meetings
23 with law enforcement in your role as a cooperating witness,
24 right?

25 A Right.

1 Q All right. And I think, again, I apologize because I think
2 Mr. Martin asked you about this, but did you or did you not
3 refrain from the use of drugs?

4 A No. I was using drugs.

5 Q All right.

6 A I think maybe a couple months after that.

7 Q I assume, again, I don't want to be critical, but what's
8 your, what's your, are you an addict?

9 A Yes, I am.

10 Q What's your drug of choice?

11 A Cocaine. Crack and heroin.

12 Q All right. So you have multiple addictions?

13 A Right.

14 Q And I assume once you start using, you are not a social drug
15 user?

16 A Not for long.

17 Q Okay. Doesn't take long for you to get going and you're
18 using around the clock?

19 A Right.

20 Q So during this time when you were assisting the law
21 enforcement, you were high all the time, I guess?

22 A No. Not when I went to meet them.

23 Q How often did you meet them?

24 A Maybe, maybe once a week, every other week.

25 Q All right. So during that time and during the times you

1 went to Parole and Probation to try to discuss things with Mr.
2 Harris, at that time you were able to stay clean?

3 A Right.

4 Q But not much of the remainder of the time?

5 A No. Well, if, if I was high or if I was using maybe, like
6 right before that meeting, I would make an excuse why I couldn't
7 show up.

8 Q Okay. Dodge them a little bit?

9 A Right.

10 Q All right. How were you -- I assume you weren't working at
11 the time?

12 A I was working South Side Construction.

13 Q All right. Is that how you were supporting your habit?

14 A Yeah. That and other things.

15 Q What other things?

16 A Side work.

17 Q Such as?

18 A House fronts, doing things. I mean --

19 Q Nothing illegal?

20 A No, except for using drugs.

21 Q You were using drugs but you weren't selling drugs or
22 working as a debt collector?

23 A No.

24 Q All right. You did resume those activities eventually,
25 though, right?

1 A Not really.

2 Q All right. You have resumed your criminal livelihood,
3 though, right?

4 A I've been working. I usually work out, out of state or
5 still with South Side Construction.

6 Q All right. Well, I notice your attire. Is those, does that
7 clothing provided to you by members of some prison facility or
8 did you buy that at The Gap?

9 A Prison.

10 Q All right. So as you sit here today, you're serving a
11 sentence?

12 A The eight years sentence. I'm finishing it, yeah.

13 Q All right. So after your endeavor to cooperate with the
14 authorities, at some point in time you resumed committing crimes?

15 A Right.

16 Q All right. Now, but you weren't high is the bottom line,
17 the times that you were working with the officers and meeting
18 with Mr. Harris?

19 A That's right.

20 Q Okay. Court's indulgence, please.

21 (Pause in Proceedings.)

22 Q Now, I just want to cover one more area with you. You said
23 that you elected to write these letters to the judge and act on
24 this information you purportedly had received because of your
25 conscience, right?

1 A Right.

2 Q All right. Define that word for me, if you would. What is
3 your "conscience?"

4 A I don't want anything else to happen to anybody else,
5 knowing I probably could have prevented it.

6 Q All right. So you're looking out for the betterment of
7 mankind?

8 A That's right.

9 Q Similar to the notion you expressed in the letter you wrote
10 to Judge Byrnes that, if he were to release you, you were going
11 to become some sort of community activist and clean up South
12 Baltimore, right?

13 MR. HARDING: Objection.

14 Q Did you write that to Judge Byrnes?

15 A Yes, I did write that letter.

16 Q All right. So your sentiment to provide for the betterment
17 of mankind by coming forward with this information is a similar
18 notion to the one that you expressed to Judge Byrnes, is that
19 fair?

20 A Right.

21 Q All right. Do you understand that it's troubling to
22 rationalize that notion against the things that you've done in
23 your life? Do you get that?

24 MR. HARDING: Objection.

25 THE COURT: Sustained.

1 Q Okay. So this was your effort to look out for the
2 betterment of mankind. And you waited, though, some nine months
3 before acting on your conscience dictating things to you, right?

4 A It was a hard thing to do.

5 Q All right. I'm not asking you whether it was easy or
6 whether it was difficult. I'm asking you only whether it took
7 you nine months to do this.

8 A Eight, nine month.

9 Q All right. And you wrote a letter to Judge Byrnes and then
10 there was no activity on it from anyone. And you wrote another
11 letter to Judge Byrnes, right?

12 A Right.

13 Q Okay. Now, Mr. Martin asked you a series of questions about
14 whether or not you did this because you wanted to get out of
15 prison.

16 A Right.

17 Q All right. And is it your testimony here today, under oath
18 in front of this jury, that you didn't do this because you wanted
19 to get out of prison?

20 A No. I wanted to finish my sentence.

21 Q All right. Now, I'm going to repeat this because I want to
22 make sure we're all clear, and perhaps I'm little thin upstairs.
23 Let me repeat this.

24 You wrote these letters, you offered to assist the
25 authorities, but you didn't want a reduction of your sentence,

1 right? You got to answer verbally.

2 A When the detectives came and saw me, I didn't even want to
3 give them this information until my sentence was over with.
4 Tommy Mallin sat down with me for about 20 minutes and talked to
5 me and asked me to give it to him right there. I didn't even
6 want to go on a tape recorder with it. I had eight months left.

7 Q Okay. Let me back up. I get that. When you first wrote
8 the letter in May --

9 A Right.

10 Q -- is it your testimony here today that you didn't want, you
11 didn't want to offer this information in exchange for your
12 release? Yes or no?

13 A I didn't want to offer it as a condition of my release. I
14 wanted to wait until my sentence was over with.

15 Q All right. When you wrote the second letter to the judge,
16 you, you weren't offering it to get out of jail?

17 A As a modification of sentence. But that wasn't the reason
18 why I was giving information about Shelton.

19 Q Okay. That was because of your conscience?

20 A Exactly.

21 Q Okay. All right. That aside, though, did you want to get
22 out of jail? Are you telling the ladies and gentlemen of the
23 jury that, notwithstanding the fact that you were providing this
24 information, it was your goal to stay in jail longer? That this
25 was not a quid pro quo?

1 A I think everybody wants to get out of jail. Right now I
2 want to get out of jail.

3 Q Of course. All right. So you were or were not providing
4 this information to get out of jail? Which is it?

5 A I always want to get out of jail but that's not why I wrote
6 that letter, no.

7 Q Okay. So you weren't offering this information in order to
8 get out of jail?

9 A No.

10 Q Okay.

11 A This would have happened when I got out of jail, anyway.

12 Q All right. Indulge me one moment, please. Now, is this
13 testimony that you didn't want, didn't want to offer this
14 information to get out of jail, you're saying this is as truthful
15 as the rest of your testimony, right?

16 MR. HARDING: Objection.

17 THE COURT: Sustained.

18 Q All right. Let's just read this one paragraph here. Can
19 you see that?

20 A Right.

21 Q All right. You see where it says note? At the bottom?

22 A Would you like me to read it?

23 Q Look at the second sentence. Did you write to the judge, I
24 am, however, will, I assume you meant to say willing, to sign an
25 agreement with the Court as a condition of release to work with

1 and supply information regarding the above-mentioned areas,
2 comma, Baltimore City Southern District narcotics officer, Tommy
3 Mallini?

4 A Mallin.

5 Q Mallini? Is that what you said?

6 A Mallin, Tommy Mallin.

7 Q Is that what you said there?

8 A Exactly.

9 Q All right. So I'm having a little trouble juxtaposing your
10 testimony here today with the words you wrote to the judge in May
11 of 2003.

12 A Well, the original letter, if they needed me to do it then,
13 they would have to get me out of jail. If they wanted to wait
14 until my sentence was over with, that's fine, I would do it then.
15 If Shelton and Bo were still locked up, they could have waited.
16 I didn't know Shelton was on the street until I was released. I
17 found, actually the day they took me to court, I found out he was
18 released. I didn't even know I was going to court.

19 Q But as Mr. Martin said, you had no trouble accepting the
20 graciousness of Mr. Harding and the other prosecutors when they
21 were effectuating your release, is that right?

22 A That's right.

23 Q All right. And you then cooperated with the authorities for
24 some period of time?

25 A Right.

1 Q And provided us with these multiple unintelligible
2 recordings, right?

3 A Right.

4 Q Okay. So the corroboration of your testimony has
5 mysteriously evaporated into thin air because of the --

6 MR. HARDING: Objection.

7 Q -- faultiness of --

8 THE COURT: The objection is sustained.

9 Q -- modern technology.

10 THE COURT: Sounds like you're finished, Mr. Lawlor.

11 Q I have a couple more questions. So after, though, after
12 your conscience got the better of you and you decided to
13 cooperate with the authorities, though, you have resumed becoming
14 part of the problem in South Baltimore as opposed to part of the
15 solution, right?

16 MR. HARDING: Objection.

17 THE COURT: Sustained.

18 Q All right. You have resumed your criminal livelihood,
19 right?

20 A No.

21 Q You have not? Well, other than the fact you're incarcerated
22 right now, though, you are back in jail because you resumed your
23 criminal livelihood, right?

24 A No.

25 Q You have not? It's a quirk of fate, a twist of fate that

1 has resulted in your re-incarceration?

2 MR. HARDING: Objection.

3 THE COURT: Sustained.

4 Q Okay. But you have resumed beating your girlfriend, right?

5 MR. HARDING: Objection.

6 THE COURT: Sustained.

7 MR. LAWLOR: No more questions.

8 THE COURT: Redirect.

9 MR. KURLAND: We just have --

10 THE COURT: Okay.

11 MR. KURLAND: Court's indulgence for just one second.

12 (Pause in Proceedings.)

13 CROSS EXAMINATION

14 BY MR. KURLAND:

15 Q God morning, Mr. Dobropolski.

16 A Good morning.

17 Q Did I pronounce the name correctly?

18 A Dobropolski.

19 Q Dobropolski. Okay. I sometimes miss that middle syllable.

20 I just have a couple of questions. I represent Mr. Shawn
21 Gardner, I'm one of the lawyers, who you do not know?

22 A Nope.

23 Q And you have never heard of him?

24 A Never seen him.

25 Q Never seen him, never heard of him?

1 A No, never heard of him.

2 Q And the nickname Goo, never heard of that nickname, either?

3 A Nope.

4 Q And in all of your, you earlier testified that in your, that
5 all of your discussions -- strike that. You earlier testified, I
6 believe, in one of the questions on cross examination that
7 everything you claimed to know about the activities of Mr.
8 Mitchell and Mr. Harris you, you learned from them?

9 A Right.

10 Q Is that correct? And in those discussions, they never
11 mentioned Mr. Gardner?

12 A No.

13 Q When you say no, that becomes an unclear answer. So it
14 would be correct, it's correct to say that in all your
15 discussions with them, they never mentioned Mr. Gardner?

16 A That's right.

17 Q And they never asked you to join an organization called the
18 Randallstown/Park Heights Organization, isn't that also correct?

19 A No.

20 Q When you say no, I don't understand, that becomes a double
21 negative and I want to be very clear.

22 A Not a double negative. They wanted me to get involved in
23 Sheistyville or something, be a muscle for them.

24 Q All right. Okay. I understand that from your direct
25 examination.

1 A I've never heard what you're talking about.

2 Q They wanted you to get involved in Sheistyville is your
3 testimony?

4 A Right.

5 Q They never asked you to get involved in the
6 Randallstown/Park Heights organization?

7 A Never.

8 Q No, they never asked you that?

9 A Never asked, no, sir.

10 Q Just a couple more questions. Now, I take it at the time
11 that you claimed to have met Mr. Harris while you were in lockup
12 for the first time, he was, he was telling you about being a
13 performer?

14 A Right.

15 Q And that's what Sheistyville was all about?

16 A Yeah.

17 Q And that Bo was apparently the producer?

18 A Right.

19 Q But apparently, though, there was some transition between
20 his discussing his music career and robbing drug dealers, is that
21 your testimony?

22 A Right.

23 Q And was it something to the effect that the robbing of the
24 drug dealers was to kind of put cash in their pockets, to kind of
25 tide them over to help finance Sheistyville?

1 A That and sell drugs.

2 Q Excuse me?

3 A That and selling drugs, things of that nature.

4 Q All right. And there was never any discussion about -- let
5 me go back a second. So they did say that somehow that the
6 robbing of the drug dealers and the selling of the drugs was to
7 sort of like finance the start-up operation of the music
8 business?

9 A Keep money in their pockets. So I mean, maybe, I mean.

10 Q All right. There was never any discussion, though, about
11 they were going to rob drug dealers to help pay for lawyers, is
12 that correct?

13 A No.

14 Q I mean with no again --

15 A No, they --

16 Q That conversation never came up?

17 A That they rob people to pay lawyers? No, it didn't.

18 Q All right. Let me just check with co-counsel for just one
19 second. I have no further questions of this witness. Thank you,
20 Your Honor.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MR. HARDING:

24 Q Good morning, Mr. Dobropolski.

25 A Good morning.

1 Q You indicated that you, on cross you indicated that you had
2 gotten arrested several times or numerous times in South
3 Baltimore, is that correct?

4 A Right.

5 Q But you told us that you grew up in Park Heights, is that
6 correct?

7 A Right.

8 Q Did you get arrested while you were working in Park Heights,
9 also, on occasion?

10 A Yeah. I was arrested in Park Heights. Auto thefts, escape
11 charge.

12 Q Okay. And you mentioned these drug traffickers on cross
13 examination whom you also mentioned on direct. Julius Collins,
14 Stover Stockton?

15 A Right.

16 Q Lex. Were those Park Heights drug traffickers or South
17 Baltimore drug traffickers?

18 A Park Heights.

19 Q And you knew Collins, you said?

20 A Right.

21 Q But you only knew of the others, is that correct?

22 A That's correct.

23 Q Now, I want to call your attention to this initial meeting
24 that you had with the detectives in October of '03, when they
25 came and got you out of the Western Correctional Institution?

1 A Right.

2 Q Did they talk to you for a while before they showed you
3 those photo arrays?

4 A I think they asked me what I knew about it, what I thought I
5 might have known about it. You know, like, well, you wrote us
6 about two, two homicides, what are you talking about?

7 Q They're referring to the letter that you had written to
8 Judge Byrnes, I assume?

9 A Right.

10 Q Because you had given a sort of outline of what you knew
11 about in that letter, is that correct?

12 A That's it.

13 Q And then they asked you what you knew about it?

14 A Right.

15 Q So you had a discussion with them before they showed you the
16 photo arrays, is that correct?

17 A Right.

18 Q Also, you've told us several times about this eight year
19 sentence. Just to clarify, Mr. Dobropolski. If you get
20 sentenced to eight years in state court, does that mean that you
21 actually have to do eight years or are there possibilities for
22 shortening the sentence through parole and probation and good
23 time?

24 A Yeah, you can shorten your sentence.

25 Q Okay. So when you get sent back on your eight year

1 sentence, does that mean that you're going to wind up having to
2 do the rest of eight years or can you actually get released early
3 again?

4 A Again, you can get released early.

5 Q Mr. Martin, in particular, yesterday, was asking you about
6 whether you had extracted information from Mr. Harris. And you
7 said that, quote, "he kind of just came out with it?"

8 A Right.

9 Q Is that correct?

10 A That's correct.

11 Q Could you elaborate? Could you explain what you mean by
12 that?

13 A We were just in a cell having a conversation about criminal
14 activities and this and that. And he kind of, he asked me if I
15 knew anything about Hasim Rahman. I said, yeah, I know he's a
16 boxer, I like boxing. And he said, you remember when he won his
17 heavyweight title, all his friends started getting killed. I
18 wasn't aware of that. And I was like no. And he was like, well,
19 two people got killed in his car, I did that, it was a guy and a
20 girl.

21 Q Okay. So --

22 A And he went in --

23 Q Sorry.

24 A And he went into more detail about it.

25 Q I see. So you had no idea he was going to start talking

1 about this, is that your testimony?

2 A That's right.

3 Q And is that the way you explained it to the detectives when
4 they came and saw you in October of '03?

5 A Right.

6 Q And as Mr. Martin pointed out, they tape recorded their
7 discussion with you that day, is that correct?

8 A Yeah, they did have a tape recorder.

9 Q And did you, in fact, tell them roughly the same account
10 you've given here today, about how the whole topic came up, that
11 Mr. Harris just sort of brought it up out of the blue? Is that
12 correct?

13 A Right.

14 Q Was it any part of your goal in having these conversations
15 with Mr. Harris after he became your cell mate to try to extract
16 a confession from him about some crime he had committed?

17 A No.

18 Q Did you describe it the same way when you testified in the
19 federal grand jury in November of '03?

20 MR. MARTIN: Objection, Your Honor. How would he know?

21 THE COURT: Overruled. You may answer.

22 A I described it -- are you asking me if I described it the
23 same way that I described it to the detectives? Like to the
24 grand jury as well?

25 Q As something that Mr. Harris brought up rather than

1 something that you had elicited?

2 A Oh, sure. Yeah. Mr. Harris brought it up.

3 Q And in fact, when you were interviewed by the detectives in
4 October of '03 --

5 THE COURT: Don't lead the witness.

6 Q Okay. Did you give the same account to the detectives in
7 '03 and to the grand jury in '03 that you've given in this
8 courtroom to this jury?

9 MR. MARTIN: Objection.

10 THE COURT: Overruled. You may answer.

11 A Yes.

12 Q You indicated that you've been locked up now for the last 17
13 months, is that correct?

14 A Yep. Yes.

15 Q In coming here today to this trial and testifying before
16 this jury, are you doing anything at all to help reduce the
17 amount of time that you're getting in jail?

18 A No. Doing the whole eight years day for day.

19 Q You testified this morning that you wore two devices when
20 you were attempting to record conversations with Mr. Harris in
21 late 2003 and the first part of 2004. Was one of those a
22 recording device and one of those a transmitter, do you know?

23 A Yeah, I believe it was. Analog and digital.

24 Q And do you know, did the transmitter permit the agents and
25 detectives who were surveilling you to actually listen to what

1 was going on when you were wearing this wire?

2 A Right. In case something happened.

3 Q In case something happened. What do you mean by that?

4 A Something would have gone on with myself and the person I
5 was trying to speak with, Mr. Harris, they would be aware of it.
6 It wouldn't just be on the recorder. They would actually be
7 aware of it. Like they could hear the conversation that, I think
8 it was being recorded and they could also hear the conversation.

9 Q What would happen if Mr. Harris discovered that you were
10 wearing a wire when you were having these conversations with him?
11 What did you think would happen?

12 A If he had a weapon on him? He might use it. Good chance he
13 would probably use it.

14 Q Did the transmitter then provide you with some kind of
15 safety because the detectives might know if you were threatened
16 by the, say, for example, by the discovery that you were wearing
17 a wire?

18 A That's right.

19 Q Did you understand that this was actually a fairly dangerous
20 kind of operation that you were involved in?

21 MR. MARTIN: Objection.

22 A Yes.

23 THE COURT: Overruled.

24 MR. HARDING: May I have just one moment, Your Honor?

25 THE COURT: Yes.

1 MR. HARDING: Your Honor, may I ask Ms. Arrington for
2 MB-51 and MB-52?

3 THE COURT: Absolutely.

4 MR. HARDING: It's not necessary that I actually have
5 the document in my hand, Your Honor. These are the statements
6 that Mr. Dobropolski wrote out, his handwritten statements. The
7 government would like to move them into evidence. They've been
8 displayed on the screen several times and the government would
9 move them into evidence.

10 MR. MARTIN: No objection, Your Honor.

11 THE COURT: They're admitted.

12 MR. HARDING: In addition, Your Honor, Mr. Martin used
13 yesterday, and Mr. Lawlor used this morning, a second letter that
14 Mr. Dobropolski wrote to Judge Byrnes.

15 THE COURT: No objection?

16 MR. MARTIN: No objection, Your Honor.

17 THE COURT: It's admitted. Was it premarked or has it
18 not yet been marked?

19 MR. MARTIN: Never been marked, I don't think, Your
20 Honor.

21 THE COURT: All right. Let's be sure to give it a
22 number. Can you do that now, Mr. Harding?

23 MR. HARDING: Yes, Your Honor.

24 THE COURT: Mr. Lawlor seems to have a copy there.

25 MR. HARDING: We can call it MB-54, Your Honor.

1 THE COURT: MD-54.

2 MR. HARDING: No. MB.

3 THE COURT: MB-54.

4 MR. HARDING: As in McCaffity/Brown.

5 THE COURT: All right. It's admitted.

6 MR. HARDING: May I have just a moment with this
7 letter, Your Honor?

8 THE COURT: Yes. Mr. Harding, I pushed past our recess
9 in the hope that we could finish with this witness. Is that
10 likely? Do you have much more?

11 MR. HARDING: I have another 15 minutes or so, I think,
12 Your Honor. If you would like to take a break now, it would be
13 fine.

14 THE COURT: Yeah. We'll take a morning recess, ladies
15 and gentlemen, at this time.

16 Please leave your note pads on your chairs. Have no
17 discussion about the case. Continue to keep an open mind about
18 all issues. Jury's excused for 15 minute recess.

19 We're in recess for 15 minutes.

20 (Jury exits the courtroom.)

21 THE COURT: Mr. Dobropolski is excused.

22 (Witness exits the courtroom.)

23 THE COURT: Mr. Harding, Mr. Hanlon, I would like to
24 give the defendants some time with their attorneys in your
25 absence. I can do that after the luncheon recess or beginning of

1 the luncheon recess. Do you have a view? I would be inviting
2 you to leave the courtroom and I will clear the courtroom with
3 just, so that just the marshals and the defendants and their
4 counsel are present.

5 MR. HARDING: It's fine either way, Your Honor, with
6 the government. Either before lunch --

7 THE COURT: When we break for lunch, we're going to
8 break for lunch at just about 1:00. And so I'll excuse you and
9 the jury. And I'll leave the defendants in here for five or ten
10 minutes.

11 MR. HARDING: Thank you.

12 THE COURT: All right.

13 (Recess.)

14 THE COURT: We'll have the jury.

15 MR. HARDING: Judge, would it be efficient to have
16 defense counsel meet with their clients after this witness is
17 done with on recross and then before we proceed to the next
18 witness? Because it's going to take a while to get him here, I'm
19 afraid.

20 THE COURT: All right. Let's see how long it takes.
21 That might be the better way to do it.

22 (Jury enters the courtroom.)

23 THE COURT: Please proceed when you're ready, Mr.
24 Harding.

25 BY MR. HARDING:

1 Q Yes. Thank you, Your Honor. Mr. Dobropolski, when you were
2 doing these undercover meetings and attempted meetings with Mr.
3 Harris, were you given any kind of instructions or, specifically,
4 a distress signal that you could use if you needed to?

5 A Yeah. A word.

6 Q A word?

7 A Um-hum.

8 Q Can you explain what you mean?

9 A Excuse me?

10 Q A word that you could use?

11 A For a distress signal. If something were to happen.

12 Q Yes.

13 A A word.

14 Q Do you remember what the word was?

15 A That would change, whatever I feel like using. I'm not even
16 sure about any one of them.

17 Q So if you felt you were in some immediate danger, you could
18 just say this word and because you had a transmitter on, the
19 officers would come to your aid, is that it?

20 A That's right.

21 Q Okay. Did you have any way of knowing, Mr. Dobropolski,
22 that these recordings of the meetings, the actual meetings that
23 you had with Mr. Harris, weren't turning out very well until you
24 were done with the meeting?

25 A No.

1 Q Do you know, did the detectives try to play the CD's after
2 you got done with the meetings?

3 A Not to me.

4 Q They didn't to you?

5 A No.

6 Q Do you know why they had you write out these statements
7 about what had happened?

8 A Yeah. They told me because it would, it would back up what
9 the recording said.

10 Q Okay. So you didn't know whether it had anything to do with
11 whether the recording came out or not?

12 A No. I think I was, I think I was actually writing
13 statements before they did anything with the recording.

14 Q Okay. In one of these statements that you wrote out -- let
15 me just put this on the screen. I want to read some of this
16 aloud because I have some questions about it.

17 You say here in this paragraph, after a three to five
18 minute wait -- is this on your screen, Mr. Dobropolski?

19 THE COURT: Perhaps you can zoom in a bit, Mr. --

20 A I can see it.

21 THE COURT: That's good.

22 Q After a three to five minute wait, Shelton walked past me
23 and I got his attention and proceeded to exit Parole and
24 Probation. When Shelton began digging in the garbage can and
25 stated, I have got my shit, and retrieved a three inch black box

1 cutter. Both of us then exited Parole and Probation. Is that
2 the weapon that you were talking about on cross examination, when
3 you said that Harris took his, took his weapon out?

4 A Right. Out of the garbage can.

5 Q Are you allowed to take a weapon like that into Parole and
6 Probation?

7 A No. There's metal detectors.

8 Q I see. So what's your understanding about what Mr. Harris
9 had done that day when he showed up at Parole and Probation?

10 A He put a weapon inside the garbage can and went into the
11 Probation Office.

12 Q I see. Now, you said, also, that the phone conversations
13 that you had with Mr. Harris were to set up meetings, not to get
14 statements. Is that correct?

15 A Right.

16 Q Can you tell us, Mr. Dobropolski, based on your background
17 and criminal activities, do people involved in such activities
18 talk about them over the telephone?

19 A No.

20 Q Can you explain why not?

21 A Well, because other people could be listening. I mean, if
22 you're talking about crimes, you always have law enforcement that
23 has access to devices that actually listen to people's phone
24 conversations. So it's just something that usually would be done
25 face to face.

1 Q So is it your testimony that you never talked about criminal
2 activities over the telephone?

3 A For the most part, no.

4 Q Is that true, also, of the other people you know of who are
5 involved, say, in drug trafficking or --

6 A Right.

7 MR. MARTIN: Objection.

8 THE COURT: Overruled.

9 A Correct.

10 Q Now, the next part of this statement that you wrote out on
11 December, regarding the December 1st meeting, you say, once
12 outside I explained to Shelton that I have a person, parentheses,
13 drug dealer, set up to be robbed but that things would get
14 serious, meaning that people would have to be killed. So I told
15 Shelton that he might not want to get involved. He said that he
16 had no problem with killing the people and waved his hand as to
17 mean that it's no big deal.

18 Whose idea was it originally that you and he would rob
19 drug dealers together, Mr. Dobropolski?

20 A When he explained that's what he did, and I also explained
21 that I know some drug dealers that could be robbed.

22 Q When did he explain that to you?

23 A When we were in the cell in Central Booking, back in August
24 of '02.

25 THE COURT: Can you get closer to the mike, please?

1 Q Okay. So that's what he explained to you when you first met
2 him; is that your testimony?

3 A Right.

4 Q And did he mention it again when you had your first meeting
5 with him at Parole and Probation?

6 A Yes, he did.

7 Q What did he say?

8 A What's up with that drug dealer? What's up with the Ecstasy
9 dealer?

10 Q An Ecstasy dealer?

11 A Right.

12 Q Did he have someone specific in mind that he wanted to rob?

13 A The person that we talked about in Central Booking.

14 Q The same person?

15 A Right.

16 Q Did he say what the guy's name was?

17 A No, because he doesn't know him.

18 Q Okay. Now, you testified on cross examination with Mr.
19 Martin, I believe, that Shelton was not attempting to ignore you
20 and that the robbery, you might have, he was eager to do the
21 robbery, is that correct?

22 A Right.

23 Q And it was, was it his idea?

24 A Sure.

25 Q Okay. But you said he got arrested before anything could

1 have, any further plans were made, is that correct?

2 A That's right.

3 Q Now, you were in touch with the agents and detectives all
4 throughout this whole operation, is that correct?

5 A Correct.

6 Q Was it your understanding that they were going to actually
7 let you do a robbery of drug dealers with Mr. Harris?

8 A No.

9 Q So what was the point of having these discussions about
10 robbing a drug dealer?

11 A I guess it was just to get his character or whatever.

12 Q Okay. Did it provide a basis for your continuing to meet
13 with him?

14 A Right.

15 Q Okay. When Mr., I believe it was Mr. Martin, kept asking
16 you about whether the, you kept saying the detectives didn't want
17 to have Shelton actually go out and do this robbery. And you
18 kept saying there were reasons for that, there were reasons for
19 that. And we never heard what the reasons were. Do you remember
20 what I'm talking about?

21 A Say it again, please.

22 Q During the cross examination this morning, when Mr. Martin
23 was talking to you, I believe --

24 A Right.

25 Q -- he was asking you about, about this robbery plan. And

1 you were saying that the detectives didn't actually want you to
2 go have Shelton meet with you, to have him actually catch a ride
3 and meet with you. And you kept saying there were reasons for
4 that, there were reasons for that. What were the reasons for
5 that?

6 A The reason why they didn't just want to take me up to where
7 he was?

8 Q Right.

9 A Right. They felt it would be hard in that area for them to
10 have surveillance like they did at Parole and Probation, no one
11 pays attention to a bunch of cars passing. Like I was going to
12 go up to Park Heights and meet with him before and they said
13 there's no way they can get their people up there to actually
14 surveil around there. They said they might stick out.

15 Q Okay. Mr. Martin played one of the taped phone calls that
16 you had with Mr. Harris this morning, the one on November 5th,
17 2003. And I wanted to ask you about a couple of the phrases that
18 I heard in that.

19 A Right.

20 Q Do you remember Mr. Harris saying something like, I got a
21 little something, something working?

22 A Yeah.

23 Q Your responding, hold off on that, don't go get yourself
24 jammed up, words to that effect?

25 A Right.

1 Q What did you understand Mr. Harris to be talking about?

2 A Selling drugs.

3 Q Selling drugs?

4 A Um-hum.

5 Q Okay. He also said near the beginning of that conversation,
6 he was trying to get to my people. What was he talking about
7 there, as far as you -- what was your understanding of what he
8 was talking about?

9 A He was trying to get to his people?

10 Q Yeah.

11 A Probably people he associates with.

12 Q Okay. And then we heard the discussions about Bo and how --
13 did you understand Mr. Harris to say that he was going to go take
14 stuff to Bo in jail? Do you remember that?

15 A Yep.

16 Q And he said that Bo kept saying he was going to -- or no.
17 You said that Bo had told you that he was going to beat that
18 charge, is that correct?

19 A Right.

20 Q Do you know what Mr. Mitchell was locked up for at that
21 time?

22 A Murder.

23 Q Okay. Do you know which murder?

24 A Nope.

25 Q Okay. And then at the end, wasn't it Mr. Harris who asked

1 how he was going to get in touch with you, and repeated a couple
2 of times that he was going to holler at you? Is that correct?
3 Do you remember that?

4 A Right.

5 Q What was he going to holler at you about?

6 A Getting money setting up drug dealers.

7 Q Okay. You said on cross examination that Mr. Harris, or,
8 no, you would not have ever brought up the murder over the phone
9 because it would have raised red flags. Do you remember that
10 phrase?

11 A Right.

12 Q What do you mean by that?

13 A Most people don't talk about things like that, criminal
14 activity, over the phone.

15 Q Okay. Okay. Let me read a little bit more of this letter.
16 I also told Shelton that when I was in prison I heard about his
17 work, which he told me about over CBIF. And I told him the alias
18 name of the person he killed, Woody. He smiled and shook his
19 head as if to let me know that I was correct.

20 So is it your testimony that Mr. Harris had actually
21 never mentioned that name, Woody, to you before you mentioned it
22 to him that day?

23 A That's right.

24 Q Okay. And you testified on cross examination, did you not,
25 that you actually overheard Detective Mallins mention that name

1 at one point, is that correct?

2 A Detective Mallin or Niedermeier, one of the two, yeah.

3 Q Okay. And so that name stuck in your head, I believe you
4 said?

5 A Right.

6 Q Why was that?

7 A Because I know a Woody from the Park Heights area.

8 Q You figured it was the same guy or maybe the same guy?

9 A Yeah. I figured it might be. It's kind of a unique name.

10 Q Okay. You told us about that on direct, actually, did you
11 not?

12 A Um-hum.

13 Q And you said you asked the detectives to confirm some
14 description of him about gold teeth and something else, is that
15 correct?

16 A Right.

17 Q And they said they couldn't, they wouldn't talk to you about
18 that, is that right?

19 A Yeah. Because they didn't want to distort the information I
20 have. They didn't want to subconsciously put it in my head or
21 whatever.

22 Q Okay. But this name "Woody" stuck in your mind, anyway,
23 apparently, is that correct?

24 A Um-hum.

25 Q Because a couple months later you used it as a device to get

1 Mr. Harris to talk about this, is that correct?

2 A Yep. Yes.

3 Q And Mr. Harris, according to your letter, it says, I also
4 told Shelton that I had argued with the guy, Woody, and a friend
5 of his, Eric, back in 1996. Woody and Eric sold drugs and guns
6 in the South Baltimore area back there.

7 Is that correct?

8 A Right.

9 Q The final thing that I said to Shelton was that the person
10 in prison that was talking about the murders he committed tried
11 to claim his work, meaning that Shelton didn't do it. Shelton
12 got a strange look, angry look, on his face and stated, he tried
13 to claim my work? I then told Shelton not to get mad, it was
14 good when people did that. And I ended the conversation.
15 Shelton left and so did I.

16 When Mr. Harris told you about some of his criminal
17 activities, did he seem to be boasting at times?

18 A Yeah.

19 Q Did you ever hear any of his, well, you told us that you did
20 hear some of his rap songs, is that correct?

21 A Right.

22 Q Did he, in fact, brag about his criminal activities in his
23 rap songs?

24 MS. RHODES: Objection.

25 THE COURT: Overruled. You may answer.

1 Q Or do you recall?

2 A He did. He did in a couple of them.

3 Q Okay. Also, I want to just try to clarify the chronology of
4 this, Mr. Dobropolski. The statements that you heard from Mr.
5 Harris and from Mr. Mitchell were in August of 2002, is that
6 correct?

7 A Late August, 2002.

8 Q It was then nine months later that you wrote Judge Byrnes in
9 Baltimore County first reporting what you had heard, is that
10 correct?

11 A Yeah. Eight or nine months. That's right.

12 Q And then that was in May of 2003?

13 A Right.

14 Q It was then in September of 2003 that you wrote Judge Byrnes
15 again that second letter, is that correct?

16 A Correct.

17 Q And the next month, actually on October 2nd, is when
18 Niedermeier and Mallins came out to talk to you at WCI, is that
19 correct?

20 A Right.

21 Q Okay. And then you had a hearing later on in the month, I'm
22 not sure of the exact day, before Judge Byrnes. And that's when
23 Judge Byrnes decided to release you, is that correct?

24 A Right.

25 Q And that's the one where the state prosecutors appeared to

1 ask that you be released, is that correct?

2 A Correct.

3 Q And you testified that it was a couple of, on cross
4 examination today, that it was a couple of months after you got
5 out before you started using drugs again, is that correct?

6 A Right.

7 Q Were you using drugs then when you first started recording
8 conversations with Mr. Harris?

9 A No.

10 Q Do you recall, was it toward the end of October that you
11 first started recording conversations with Mr. Harris?

12 A It was in October.

13 Q Okay. And when you testified in the federal grand jury, I
14 believe you remembered the exact day this morning, November 19th
15 of 2004?

16 A That was the grand jury, yeah.

17 Q I'm sorry. What did I say?

18 A That's right. November 19th. Grand jury.

19 Q Okay. Had you started using drugs by that time?

20 A No. I think around December.

21 Q Okay. Mr. Lawlor was talking to you today about your
22 account, your account of what Mr. Harris told you about the
23 murder of Woody and the woman who was with Woody in the car that
24 day, in Rahman's car.

25 A Right.

1 Q And you said something about how, the way Harris described
2 it, he just described what he did, is that correct?

3 A Right.

4 Q So do you know where Bo was at the time?

5 A No.

6 Q Would you know whether he was right outside the car or a
7 block away or what?

8 MS. RHODES: Objection. Leading.

9 THE COURT: Overruled. You may answer.

10 A Don't know.

11 Q Okay. Was it possible, based on what you heard from Mr.
12 Harris, that Mr. Mitchell was even in the car?

13 MS. RHODES: Objection, Your Honor.

14 THE COURT: Sustained.

15 Q You testified, Mr. Lawlor was asking you about your desire
16 to get out of jail and what that had to do with your testimony
17 about this crime, this double murder that Mr. Harris and Mr.
18 Mitchell both discussed with you. And you said, this would have
19 happened whether or not you got out of jail.

20 A Right.

21 Q In fact, Mr. Dobropolski, would it be fair to say that
22 you're serving the entire eight month, eight year sentence that
23 you had hanging over your head and have gotten no advantage at
24 all by coming in here and testifying today?

25 MR.MARTIN: Objection.

1 Q Would that be correct?

2 A That's correct.

3 Q Would it be accurate to say, then, that, in fact, this did
4 happen whether or not you got out of jail?

5 MS. RHODES: Objection, Your Honor.

6 THE COURT: Overruled. You may answer.

7 A That's correct.

8 Q If I may have just one moment, Your Honor.

9 THE COURT: Yes.

10 (Pause in Proceedings.)

11 MR. HARDING: No further questions, Your Honor.

12 RE CROSS EXAMINATION

13 BY MR. MARTIN:

14 Q Just a few questions, Your Honor.

15 THE COURT: All right.

16 Q At least I hope it's just a few. I think. Mr. Dobropolski,
17 let's go to the last thing you said here. That this would have
18 happened whether or not you get out of jail, correct?

19 A Right.

20 Q And that you got nothing out of this cooperation, right,
21 because you're serving your whole eight year sentence, right?

22 A Right.

23 Q You got out of jail in October of 2003 because of this
24 cooperation, didn't you?

25 A Right.

1 Q If you had kept your nose clean, you would have stayed out,
2 isn't that right?

3 A Right.

4 Q You didn't keep your nose clean, right?

5 A Right.

6 Q Even after the first time you didn't keep your nose clean,
7 Mr. Harding went back and went to bat for you again, didn't he?

8 A Correct.

9 Q And you got out again, didn't you?

10 A Right.

11 Q You still couldn't keep your nose clean, right?

12 A That's right.

13 Q And that's why you're serving the rest of the sentence,
14 right?

15 A Yes.

16 Q If you had done what you were supposed to do, you would have
17 gotten a break and half your sentence would have been cut, isn't
18 that right?

19 A Right.

20 Q You'd said that Mr. Harris boasted about his crimes. Did
21 you listen to any of his CD's?

22 A No.

23 Q So he boasted in these rap songs that he was serenading you
24 with in prison. Is that what you're saying?

25 A Right.

1 Q And he boasted about his crimes, or was he boasting about
2 crimes?

3 A Some his, some about crimes.

4 Q I'm sorry. Go ahead. Some of his and some others?

5 A Yeah. Just gangsta rap, but some of the stuff were his
6 crimes.

7 Q How do you know?

8 A Some of the stuff, some of the lyrics that he said.

9 Q What did he say?

10 A I think in one of them he was talking about killing somebody
11 with a .45, and I know you can feel me, Bo, and something
12 something.

13 Q So one of his crimes was where he was boasting about killing
14 someone with a .45?

15 A Right.

16 Q And you know that that relates to something that he did?

17 A Yeah. He was writing it, yeah.

18 Q And is that, you saying that relates to the crime that he
19 confessed to you about the double murder?

20 A Right. Some of the lyrics that he would write, he didn't
21 want to be, he didn't want to be considered a studio gangster.
22 So the stuff that he would write, he would write about actual
23 things.

24 Q Boasting about the .45 was one of those, right?

25 A Excuse me?

1 Q Boasting about the use of a .45 was one of those?

2 A Right.

3 Q And you knew that because he told you that that double
4 murder was a .45, right?

5 A No. But it was right around the same time.

6 Q It was right around the same time. But you know that was a
7 crime he committed then?

8 A Right.

9 Q Because he told you that?

10 A Yeah. He told me that.

11 Q You didn't tell the detectives about that when you met with
12 them, did you?

13 A I mean, they asked me about his lyric before.

14 Q You didn't tell the detectives about this other crime, did
15 you?

16 A Another crime?

17 Q Yes.

18 A I think it's the one that's concerning Mr. Mitchell, when he
19 had him kill these two people.

20 Q All right. That's the one about the .45?

21 A I think. Called a four-fifth, whatever, whatever.

22 Q All right. Now, but you never heard any of the CD's, right?
23 So this is only the songs that he would rap for you in prison?

24 A That's right.

25 Q Now, you'd said that the name Woody stuck in your mind

1 because it was someone that you had a beef with at some time,
2 isn't that right?

3 A That's correct.

4 Q Back in, he and a guy named Eric back in 1996?

5 A Yup, '96 I believe it was.

6 Q That's right. In Park Heights, right?

7 A Nope, South Baltimore.

8 Q South Baltimore. Okay. And the beef was in South
9 Baltimore?

10 A Right.

11 Q So it wasn't Park Heights, it was South Baltimore?

12 A That's correct.

13 Q So Mr. Harding was wrong when he asked you just now that it
14 took place in Park Heights, wasn't it?

15 MR. HARDING: Objection.

16 A I thought he said South Baltimore.

17 Q Well, he used Park Heights in his question. The jury can
18 determine. I'm sorry.

19 THE COURT: All right.

20 Q So this was a beef that you had with a guy named Woody in
21 1996?

22 A Right.

23 Q In South Baltimore?

24 A Correct.

25 Q And Woody had a buddy named Eric?

1 A Right.

2 Q And you had a beef with Eric as well, right?

3 A Right.

4 Q You sure of that?

5 A I'm sure of that.

6 Q Okay. Now, Mr. Harding noted in one of these conversations,
7 I believe it was a conversation that took place on November 5th,
8 Mr. Harris said he took a number from you and said he would
9 holler at you?

10 A Right.

11 Q He never did holler at you, did he?

12 A I don't think so.

13 Q In fact, the only time he ever contacted you was after you
14 contacted him, right?

15 A Correct.

16 Q You testified about the reasons for the surveillance of you.
17 To protect you, correct?

18 A Right.

19 Q But in fact, the reasons that they didn't want you to take a
20 car was because they couldn't surveil you as well. So in other
21 words, they didn't want you to drive to Park Heights where he
22 was.

23 A Right.

24 Q Because it would be difficult for them to blend into the
25 neighborhood or whatever?

1 A Right.

2 Q But that's why Parole and Probation was perfect, because
3 they could surveil you there, right?

4 A Correct.

5 Q So they were able to surveil you there, both while you were
6 outside and inside Parole and Probation, right?

7 A Right.

8 Q You testified about the Ecstasy dealer?

9 A Right.

10 Q That you guys were talking about taking off?

11 A Right.

12 Q And Mr. Harding asked you if he gave you a name. And your
13 answer was no, because he doesn't know the name.

14 A That's right.

15 Q Because it's somebody you know, right?

16 A Somebody I would have to get in touch through somebody to
17 get his name, right.

18 Q All right. So it wasn't anybody that Mr. Harris had in mind
19 about knocking off. It was your idea, right?

20 A We were talking about robbing people and I brought up an
21 Ecstasy dealer that I know that's in Delaware.

22 Q But he didn't know this Ecstasy dealer; that was somebody
23 you knew?

24 A That's right.

25 Q And you testified that you weren't using drugs when you were

1 taping Mr. Harris, correct?

2 A That's correct.

3 Q Do you remember your first violation of probation hearing?

4 A Yes, I do.

5 Q And who was your probation officer?

6 A I think Mr. Jackson.

7 Q Robinson? Well, let me ask you this.

8 A All right. Go ahead.

9 Q You, you didn't go give any urine samples after you were put
10 on probation, did you?

11 A I reported one time. I stopped reporting. That's why I
12 wasn't giving urine. I just wasn't going at all.

13 Q You never gave a urine sample?

14 A I never went.

15 Q And one of the reasons you didn't want to go was because if
16 you had to give a urine sample, you would get caught, right?

17 A No, not until about December.

18 Q So miraculously, even though you didn't report in November,
19 you weren't using drugs in November?

20 A No.

21 Q After December you didn't report because if you had reported
22 they would have found that you were using drugs, correct?

23 A Yeah. After December. I think it was --

24 Q And after December, you had contacted Mr. Harris a number of
25 times and met with him at least once, right?

1 A Excuse me?

2 Q After December, the beginning of December, you contacted Mr.
3 Harris a number of times on the phone and you met with him at
4 least once, right?

5 A Yeah, I did speak with him once.

6 Q And you were using drugs then, weren't you?

7 A Not at the time I made the phone call.

8 Q During that time period you were using drugs, weren't you?

9 A Right.

10 Q Okay. And when you went to court with Judge Byrnes, Judge
11 Byrnes said he didn't believe you when you said you weren't using
12 drugs as far as back as November, isn't that right?

13 A That's right.

14 MR. HARDING: Objection.

15 THE COURT: Overruled.

16 MR. MARTIN: Thank you, sir.

17 RE CROSS EXAMINATION

18 BY MR. LAWLOR:

19 Q Sir, these rap lyrics that you referenced, that was Mr.
20 Harris's activity, right?

21 A Right.

22 Q Mr. Mitchell had nothing to do with that?

23 A No. They're his lyrics, Mr. Harris's.

24 Q Okay. Now, regarding this eight years, Mr. Martin just
25 asked you about it and he was polite enough to suggest that you

1 failed to keep your nose clean, is that right?

2 A Correct.

3 Q The truth of the matter is you violated your probation by
4 stealing a car, right?

5 A Right.

6 Q And assaulting another woman, right?

7 A No.

8 Q No? You're not sure? You seem to be a little hesitant.

9 A No, it wasn't. That was in '04.

10 Q A different occasion?

11 A Different occasions.

12 Q Okay. And in terms of some other benefits you received,
13 though, you got some money from the government in this case,
14 right?

15 A They used to give me a few dollars here and there when I
16 was --

17 Q \$150 in one time, 300 on another occasion?

18 A Correct.

19 Q All right. And that was in January and February of '04,
20 after you started using again, right?

21 A Right.

22 Q All right. So after you started using again, after you
23 start committing more crimes, after you failed to satisfy the
24 conditions of your probation, they give you money and they come
25 to court for you to vouch for you. Is that how we get, is that

1 where we stand?

2 A I mean, they came to court but I don't think they vouched
3 for my drug use or anything like that.

4 Q Okay. They provided you money, which I assumed you turned
5 into narcotics purchasing, right?

6 A No.

7 Q No?

8 A Paid bills.

9 Q Paid the bills. All right. And just the final thing. Mr.
10 Harding went through, put a piece of paper up here on the screen.
11 That was something that you wrote, right?

12 A Right.

13 Q Okay. And what you wrote unfortunately didn't translate to
14 any recording, right?

15 A No, it didn't.

16 Q All right. So the veracity of what somebody writes down
17 depends on the truthfulness of the author; wouldn't you agree
18 with that?

19 A Correct.

20 MR. HARDING: Objection.

21 THE COURT: Sustained.

22 Q I could write down on a piece of paper that I'm the queen of
23 England, right?

24 MR. HARDING: Objection.

25 THE COURT: Sustained.

1 MR. LAWLOR: Thank you, Your Honor.

2 THE COURT: Mr. Dobropolski, you're excused.

3 Members of the jury, we'll break now for lunch. It's
4 approximately 12:40. I'll ask you to be back in the jury
5 reasonable no later than 2 p.m. in the afternoon. We expect to
6 have a full day today, so we'll probably be here until close to
7 5:00.

8 Please leave your note pads on your chairs. Have no
9 discussion about any of the testimony or anything you've heard so
10 far. Enjoy your lunch. The jury's excused.

11 (Jury exits the courtroom.)

12 THE COURT: Government counsel are excused.

13 Ladies and gentlemen sitting in the gallery, the Court
14 will need to vacate the courtroom at this time for a sealed
15 proceeding. Please join us again at 2:00.

16 (Government counsel leaves and spectators leave.)

17 THE COURT: All right. Counsel, I received an informal
18 request that counsel might appreciate an opportunity, however
19 brief, to consult with your clients. So I'm giving you that
20 opportunity now.

21 Obviously, I expect this to be very brief. But please
22 go ahead and take advantage of this opportunity.

23 (Pause in Proceedings.)

24 THE COURT: All right. The record will reflect for
25 approximately eight to ten minutes or so the Court has been here,

1 defendants have had an opportunity to consult with their counsel
2 individually. The Court has had the husher activated and no
3 one's been present in the courtroom other than counsel and the
4 defendants, the Deputy U.S. Marshals, and the support staff of
5 the defendants.

6 Does anybody else want more time?

7 (No response.)

8 THE COURT: All right. We'll stand in recess until
9 2:00. I thank the marshals. Defendants are excused. We're in
10 recess.

11 (Recess at 12:43 p.m.)

12 (Jury not present in courtroom.)

13 THE COURT: Let me just finalize the Court's ruling as
14 to the admissibility of statements attributed to Mr. Harris and
15 Mr. Mitchell from the last witness. The Court has no hesitation
16 in reaffirming its view based on the government's proffer and its
17 understanding of the record, that the conversations between Mr.
18 Harris and Mr. Dobropolski do not fall on the idle chatter side
19 of the line drawn by Shores.

20 The Court has no hesitation in finding by a
21 preponderance of the evidence, having now heard the direct and
22 cross of Mr. Dobropolski, and drawing the inferences that the
23 Court is permitted to draw, that indeed Mr. Harris's
24 conversations with Mr. Dobropolski went beyond, well beyond idle
25 chatter; that with knowledge of Mr. Dobropolski's apparent

1 reputation, Mr. Harris no doubt was seeking to bolster his own
2 reputation.

3 And the Court finds, again, that the statements Mr.
4 Harris made to Mr. Dobropolski admitting involvement in the
5 McCafferty/Brown murders and his drug dealing activities, his
6 robbery activities, were in furtherance of a conspiracy of which
7 Mr. Harris demonstrably was a part.

8 The Court is aware that Mr. Dobropolski made certain
9 admissions on cross examination and, indeed, on direct
10 examination. For example, that he did not set out to recruit,
11 that is that Mr. Harris did not set out to recruit Mr.
12 Dobropolski and that Mr. Dobropolski, quote-unquote, "extracted
13 certain statements from Mr. Harris." But the Court credits the
14 government's version of how these conversations took place.

15 Specifically, the Court credits Mr. Dobropolski's
16 assertion that Mr. Harris basically came out with, I think that's
17 a quote, came out with these disclosures. And it's clear that
18 Mr. Harris expressed a willingness to engage in like activities
19 with Mr. Dobropolski. It's clear that Mr. Mitchell ratified Mr.
20 Harris's statements to a very significant extent in the language
21 that people in this milieu employ.

22 So for all these reasons and the reasons expressed on
23 yesterday, the Court confirms that it was not necessary to hold
24 an evidentiary hearing outside the presence of the jury for it to
25 rule preliminarily on the admissibility of these statements and

1 these statements. Clearly admissible against Mr. Harris and Mr.
2 Mitchell respectively, are likewise admissible and may be
3 considered by the jury should the jury find the other subsidiary
4 facts necessary to determine that Mr. Gardner and Mr. Martin were
5 members of the conspiracy with Mr. Mitchell and Mr. Harris.

6 We're ready for the next witness? That would be --

7 MS. RHODES: Could I be heard briefly in response, Your
8 Honor?

9 THE COURT: No. There's no response to a Court's
10 ruling.

11 MS. RHODES: Well, it has to do with Mr. Mitchell
12 specifically.

13 THE COURT: But there's no response. The Court had
14 already preliminarily ruled. And I simply made clear my ruling
15 and firmed it up. So there's no response.

16 MS. RHODES: Perhaps I shouldn't have called it a
17 response.

18 THE COURT: Okay.

19 MS. RHODES: In light of the Court's ruling.

20 THE COURT: In light of the Court's ruling. All right.

21 MS. RHODES: Our position is that, just for the record,
22 our position is that what Mr. Mitchell was saying to Mr.
23 Dobropolski was, in fact, mere idle chatter, if even that,
24 because the conversations were --

25 THE COURT: Right. It is a response, Ms. Rhodes, and

1 I'm not going to accept a response to the Court's ruling.
2 There's argument. There's thinking about the argument. There's
3 a preliminary ruling. And then there's ruling. There's nothing
4 more to be said.

5 MS. RHODES: Your Honor, we would move to strike, on
6 Mr. Mitchell's behalf, we move that the Court strike Mr.
7 Dobropolski's testimony and that, because we don't believe any
8 curative instruction can resolve the problem that that's coming
9 in against Mr. Mitchell. And in lieu of that, we ask the Court
10 grant us a mistrial at this time.

11 THE COURT: The Motion For a Mistrial is denied. The
12 Motion to Strike is denied.

13 MR. CROWE: Your Honor, I just point out that the next
14 witness, I understand, is Mr. Montgomery. And we have the same
15 issue with respect to him.

16 And on that, my recollection, in fact my firm
17 recollection, because I reviewed the transcript yesterday, is
18 that the Court's preliminary indication was that Mr. Gardner's
19 statements to Mr. Montgomery were not in furtherance of the
20 conspiracy.

21 THE COURT: What statement are you referring to, Mr.
22 Crowe?

23 MR. CROWE: The principal statement that I'm referring
24 to is Mr. Montgomery's statement that Gardner told him that
25 Martin was going to get off on the Wyche brother murders because

1 he had set up, essentially, a phony alibi.

2 MR. HARDING: May I be heard on that, Your Honor?

3 THE COURT: Of course. Just a moment. Just a moment.
4 When was the statement made, Mr. Crowe?

5 MR. CROWE: My understanding is, Your Honor, that the
6 statement was made probably sometime in April or May of 2002.

7 THE COURT: And what was Mr. Montgomery's relationship
8 to any of the defendants at that time?

9 MR. CROWE: My understanding is that he had virtually
10 no relationship to any of the defendants at that time. And in
11 fact, the Court's ruling, and this is on the transcript on June 7
12 of 2000 -- the Court's preliminary ruling was, on the
13 coconspirator issue regarding Mr. Montgomery's testimony,
14 proposed testimony regarding the statements of Mr. Gardner which
15 Mr. Martin has strongly objected to, as well as Mr. Gardner in
16 part, the material that I've looked at so far seems to me clearly
17 to show that Mr. Montgomery was, one, not a member of this
18 conspiracy, and two, that the statement was not made in
19 furtherance of the charged conspiracy. But I'm not making that
20 ruling. All I'm saying is that based on what I've seen so far,
21 it seems pretty obvious that the government has other evidence
22 that it intends to offer in support of the admissibility of Mr.
23 Gardner's statements as coconspirators statements.

24 And then the Court goes on to say that it's keeping an
25 open mind.

1 The materials that had been submitted at that time were
2 a question and answer session dated June -- excuse me -- January
3 22, 2003 in the U.S. Attorney's Office, where the questioning was
4 done by Assistant State's Attorney Dean Stocksdale. We had
5 provided a copy of that question and answer as Exhibit One to a
6 memorandum which we filed in, I believe it was May of 2007. The
7 Court had also looked at --

8 THE COURT: I'm sorry. Just one moment. You say
9 January 22?

10 MR. CROWE: Of 2003.

11 THE COURT: '03. The government has handed up to me,
12 and I assume you all have this, hopefully in the same
13 aggregation, what appears to be, I don't know, nearly eight or
14 nine different statements, testimony, proffers.

15 MR. HARDING: Your Honor, I didn't hand anything up to
16 the Court.

17 THE COURT: I'm sorry? Excuse me? You say you did
18 not?

19 MR. HARDING: Did not, no.

20 THE COURT: Just one moment. Where did you get this,
21 Belinda? Oh, I'm sorry. Mr. Crowe handed it up.

22 MR. CROWE: Yes. In the event the Court wanted to hear
23 argument, those are additional matters which we received
24 yesterday. And I put exhibit labels.

25 THE COURT: So this is the Montgomery Jencks?

1 MR. CROWE: This is the additional Montgomery stuff
2 which we got yesterday afternoon, yesterday morning and yesterday
3 afternoon. And I will tell the Court that I have been through
4 the 50 or 60 pages and I don't see anything in there which would
5 change the Court's preliminary ruling. On the contrary, it would
6 seem to me to enforce it.

7 THE COURT: Okay. Let me hear from Mr. Harding,
8 please.

9 MR. HARDING: Judge, Mr. Coburn filed a pleading about
10 this on Sunday, and I haven't had a chance to respond because
11 I've been so tied up with the witness preparation for this week.

12 But there's some errors in his pleading and also some
13 misunderstandings in the representations that have been made in
14 this matter all along that I want to try to address.

15 I'm not asking the Court to rule on this before we get
16 to the actual coconspirator statements because the Court has to
17 find that Montgomery was a coconspirator. As Mr. Coburn
18 suggests, the Court has preliminarily ruled that he was a
19 coconspirator. So that would amount to changing the position the
20 Court took when you made your preliminary ruling sometime ago.

21 THE COURT: Mr. Crowe just read to me from a transcript
22 in which he says I said that it did not appear that Mr.
23 Montgomery was.

24 MR. HARDING: That was at the time of a suppression
25 hearing many, many months ago. But we've already heard a lot of

1 testimony about Will Montgomery and you're going to hear a lot
2 more today.

3 As a matter of fact, at the time these coconspirator
4 statements were made, which were shortly after April 17th of
5 2002 --

6 THE COURT: You referring now specifically to Mr.
7 Gardner's statements to Mr. Montgomery?

8 MR. HARDING: Yes. Will Montgomery and Gardner and
9 Martin and Aaron Holly were all involved in a complex robbery
10 scheme, a home invasion robbery of this guy, Goose, up until the
11 time Martin was arrested. There were also plans to rob Darius
12 Spence. But Martin's arrest changed everything because they
13 weren't able to get to Goose any more.

14 Gardner was briefly locked up at around the same time
15 on a violation of probation. He got out of jail and immediately
16 undertook to explain to Montgomery that this arrest of Martin was
17 not going to be a major problem because, and that they would be
18 able to resume their robbery schemes against Goose and others
19 because Martin had an alibi. And in fact, at the time it was an
20 alibi that was intended to apply to Mr. Mitchell as well. And
21 the alibi had to do with buying paperwork to go to a movie. The
22 claim was going to be that they were going to say they were at a
23 movie at the time of the Wyche brothers murder.

24 And the reason this is in furtherance is that Gardner
25 is explaining to his coconspirator, Mr. Montgomery, how it is and

1 why it is that Mr. Martin is about to, going to be able to rejoin
2 them in their scheme. It's very much in furtherance of the, of
3 the conspiracy.

4 THE COURT: Okay. I think that the simplest way to do
5 this, Mr. Harding -- forgive me for cutting you off -- let's
6 bring Montgomery out and have you go ahead and establish the
7 conspiracy and the in-furtherance element of Mr. Montgomery's
8 statements. Doesn't sound like it's going to take very long.
9 Let's do that first.

10 Now, Mr. Lawlor, I think I speak for the jury. Your
11 sarcasm has worn thin. So I would ask you, please, to conduct
12 your cross more in line with traditional mainstream courtroom
13 practice.

14 MR. LAWLOR: Okay, Judge.

15 THE COURT: So what I'm asking you to do, Mr. Harding,
16 when he comes out, is simply focus on the elements under 801 and
17 let's see if we can't get this done expeditiously.

18 Mr. Montgomery, would you stand and be sworn, please?

19 WILLIAM MONTGOMERY, GOVERNMENT'S WITNESS, SWORN

20 THE WITNESS: I do.

21 THE CLERK: Be seated. Speak directly toward the mike.
22 State your name and spell it for the record, please.

23 THE WITNESS: William Montgomery. W-I-L-L-I-A-M.
24 M-O-N-T-G-O-M-E-R-Y.

25 THE COURT: If you want some water, Mr. Montgomery,

1 there's water available.

2 THE WITNESS: Thank you.

3 DIRECT EXAMINATION

4 BY MR. HARDING:

5 Q Mr. Montgomery, just by way of explanation, we're here in a
6 hearing outside the presence of the jury. The jury's not going
7 to be here for a few minutes yet. Okay?

8 I want to just establish, I just want to try to ask you
9 a few background factual questions, Mr. Montgomery. Calling your
10 attention to the period a couple of months prior to the arrest of
11 Mr. Shelly Wayne Martin in April of 2002. Were you involved in a
12 scheme with him and Shawn Gardner and Aaron Holly to commit
13 robberies?

14 A Yes.

15 Q Specifically --

16 THE COURT: Could you back up just a bit and establish
17 that he knows the defendants and how long he's known them and
18 where?

19 Q Do you know Shelly Wayne Martin?

20 A Yes.

21 Q Could you point him out to us, please?

22 A With the black shirt on.

23 Q And also, do you know Shawn Gardner?

24 A Yes.

25 Q Could you point him out?

1 A White shirt on (indicating).

2 Q And do you know Willie Mitchell, also known as Bo?

3 A Yes. Gray shirt on.

4 MR. HARDING: May the record reflect that the witness
5 has identified all three defendants, Your Honor.

6 THE COURT: So noted.

7 MR. MARTIN: Three of four, Your Honor.

8 BY MR. HARDING:

9 Q And how long have you known these gentlemen?

10 A Since I was a little boy.

11 Q You grew up with them?

12 A Yes.

13 Q Whereabouts?

14 A Woodlawn, Randallstown.

15 Q Okay. Over the years between about 1994 and 2002, did you,
16 for example, go to New York with these three persons to purchase
17 narcotics?

18 A Say that again, please.

19 Q Did you go to New York to purchase narcotics with these
20 three gentlemen or --

21 A Yes.

22 Q Yes? Okay. Did you, were you involved in robberies with
23 these three gentlemen?

24 A Yes.

25 THE COURT: During what period of time, sir?

1 THE WITNESS: I'd say maybe starting around like '97.

2 BY MR. HARDING:

3 Q And were you still involved in a robbery scheme with at
4 least Mr. Martin and Mr. Gardner in the early months of 2002?

5 A Yes.

6 Q And was that the robbery scheme that involved -- well, what
7 was the name of the immediate target of your robbery scheme at
8 that time?

9 A Goose.

10 Q Do you know Goose's real name?

11 A No.

12 Q What line of business was Goose in?

13 A Drug dealing.

14 THE COURT: Could you explain, Mr. Montgomery, what you
15 understand Mr. Harding to mean by a "robbery scheme?" He used
16 that term a couple of times, a robbery scheme. What does that
17 mean to you?

18 THE WITNESS: What it mean to me?

19 THE COURT: Yes.

20 THE WITNESS: Planning a robbery. Planning to rob
21 somebody.

22 THE COURT: All right. Go ahead, Mr. Harding.

23 BY MR. HARDING:

24 Q Did you need to know where the, where Goose lived in order
25 to do the robbery?

1 A Yes. That was part of it, I believe.

2 Q And why did you need to know where he lived?

3 A To get the money and drugs, whatever else he had.

4 Q Was this to be a home invasion robbery?

5 A Yes.

6 Q Have you committed home invasion robberies on other
7 occasions?

8 A Yes.

9 THE COURT: With whom?

10 THE WITNESS: Shawn Gardner.

11 THE COURT: Anybody else?

12 THE WITNESS: Other people that's not in this trial.

13 THE COURT: All right. Go ahead, Mr. Harding.

14 BY MR. HARDING:

15 Q Okay. In fact, were you involved in the home invasion
16 robbery of Darius Spence later on, after April of 2002?

17 A Yes.

18 Q Do such robberies involve substantial planning and
19 surveillance activity?

20 A Yes.

21 Q Were you involved in that activity with Mr. Martin and Mr.
22 Gardner prior to Mr. Martin getting locked up?

23 A Yes.

24 Q Did there come a time when Mr. Martin got locked up around
25 April of 2002?

1 A Yes.

2 Q And in fact, did Mr. Mitchell get locked up around that,
3 somewhat earlier?

4 MR. LAWLOR: Objection, Your Honor.

5 THE COURT: Overruled. You may answer.

6 THE WITNESS: I didn't hear the question.

7 BY MR. HARDING:

8 Q Did Mr. Mitchell get locked up somewhat earlier? Did you
9 hear about that?

10 A No.

11 Q Okay. Turning to Mr. Martin, then. You heard that he had
12 gotten locked up. Did you have a conversation with Mr. Gardner
13 shortly thereafter?

14 A Yes.

15 Q Had Mr. Gardner been locked up?

16 A Yes.

17 Q What for and for how long, if you know?

18 A Not for long. I think for violation of probation or
19 something.

20 Q Okay.

21 A A warrant.

22 Q Okay. After he got out and had this conversation with you,
23 what did he tell you?

24 A He told me a lot. He told me that the reason Wayne was
25 locked up, because Bo made a mistake and said his name over a

1 phone. He told me about the alibi. Told me a lot of stuff.

2 Q Okay. Let's focus on the alibi. What did he tell you about
3 the alibi?

4 A Wayne supposed to purchase some movie tickets on his credit
5 cards, said he was going to be at the movies. They had a receipt
6 to be at the movies during the time.

7 Q And was anybody else involved in that alibi, do you
8 remember?

9 A I thought all three of them was a part of it, from my
10 understanding.

11 Q All three of them meaning who?

12 A Wayne, Bo, and Goo.

13 Q Okay. Why do you think that Mr. Gardner was telling you
14 this story?

15 MR. CROWE: Objection.

16 THE COURT: Overruled. You may answer.

17 A I don't know.

18 Q Was Mr. Martin supposed to be involved in a robbery scheme
19 with you at that time?

20 MR. CROWE: Objection, Your Honor.

21 THE COURT: Don't lead the witness. Rephrase the
22 question.

23 BY MR. HARDING:

24 Q What, if the alibi worked, what would it mean for Mr.
25 Martin?

1 A He would beat the charge.

2 Q Okay. Would he then be available to --

3 MR. CROWE: Objection.

4 THE COURT: Don't lead the witness.

5 Q What would that mean for your plans with Mr. Martin and Mr.
6 Gardner?

7 A They'd be back on.

8 Q They'd be back on?

9 A Yeah.

10 Q Okay. You said that he told you a lot of things. Do you
11 remember any of the other things that he told you about this
12 charge that Mr. Martin had picked up?

13 A As far as the charge go, he said that when they was supposed
14 to have been doing the robbery/murder or whatever, that somebody
15 must have pressed a button on the phone and Bo voice got recorded
16 saying, you ain't check his pockets, Wayne.

17 Q You ain't check his pockets, Wayne?

18 A Yeah. But he, Goo said he really said "man."

19 Q He didn't say "Wayne", he said "man?"

20 A Right. But detectives took it for Wayne.

21 Q And who was it, according to Mr. Gardner, who said the
22 phrase, "You didn't check his pockets?"

23 A Bo.

24 Q Okay. And did he tell you anything about narcotics?

25 A Yeah. He said one detective said they left a key in the

1 car.

2 Q What did Mr. Gardner say about that?

3 A He ain't believe him.

4 Q He didn't believe the detective?

5 A Right.

6 Q Okay. And so did you proceed, then, on the assumption that
7 Martin would probably beat the charge and be out of jail?

8 A Yes.

9 Q And did you then alter your plans for who the next target of
10 your robbery --

11 THE COURT: I'm sorry, Mr. Harding. You're going to
12 have to back up. You're going to have to put this evidence in
13 context.

14 Q Oh, I see. I thought you meant physically back up.

15 THE COURT: No. No.

16 Q When did this plan to rob --

17 THE COURT: First of all, first all, Mr. Montgomery,
18 what, if any, contact did you have in January, February, and
19 March of 2002 with any of the three people you've identified?
20 When did you see them, if at all? How did you see them? What
21 happened when you saw them? What was going on in January,
22 February, and March of 2002, if anything, between you and any of
23 these individuals? As best as you can recall.

24 THE WITNESS: I really can't recall the dates or the
25 months.

1 THE COURT: Do you remember the year 2002?

2 THE WITNESS: Yeah.

3 THE COURT: What do you remember about that year?

4 THE WITNESS: Well --

5 THE COURT: The early part of that year.

6 THE WITNESS: Wayne first came home. I think the first
7 time I seen Wayne was at a Shell gas station.

8 THE COURT: And when approximately was that?

9 THE WITNESS: It was, it was early in 2002.

10 THE COURT: All right. Who else, if anybody, did you
11 see?

12 THE WITNESS: I've been hooked up with Goo.

13 THE COURT: When you say "been hooked up with Goo",
14 what do you mean by that?

15 THE WITNESS: We, we've been in contact with each other
16 through E.

17 THE COURT: And who is E?

18 THE WITNESS: Aaron Holly.

19 THE COURT: And you're still talking about 2002?

20 THE WITNESS: Yeah.

21 THE COURT: Anybody else?

22 THE WITNESS: No.

23 THE COURT: Did you engage in any activities with any
24 of these gentlemen in January or February of 2002, as best you
25 can recall?

1 MR. HARDING: May I inquire, Your Honor?

2 THE COURT: Yes. Go ahead, Mr. Harding. I'm just
3 trying to understand. I think you see what I'm trying to
4 understand.

5 BY MR. HARDING:

6 Q Okay. When you ran into Mr. Martin at the Shell gasoline
7 station, the first time you saw him after he came home, where was
8 he residing at that time?

9 A He was still in a halfway house.

10 Q Still in a halfway house. And when you met him, did you
11 have a discussion about a --

12 THE COURT: What, if any, discussion did you have?

13 Q What, if any, discussion did you have with him at that
14 initial meeting you had?

15 A When I met him, I asked him what's up. We tripped for a
16 minute. I asked him what he was doing because I rolled up on
17 him, he was almost asleep for real. So I asked him what he was
18 doing at the Shell station. Said he was trying to sit down, wear
19 off his liquor.

20 THE COURT: Trying to do what? I'm sorry.

21 A Wear off his liquor.

22 THE COURT: Wear off some liquor. Okay.

23 A So we got to talking. I don't know how it came up, but we
24 got to talking about Goose and the robbery.

25 Q Who brought it up? Do you remember that?

1 A He did.

2 Q Okay. Were you involved in planning, plans with him after
3 that?

4 A I wasn't really involved in planning it. That was his
5 thing. I told him that I knew a spot where Goose come to at
6 Randallstown, a house. But that was his whole thing.

7 Q Did you have a subsequent discussion in a car out in front
8 of Aaron Holly's house with Mr. Martin and Mr. Gardner?

9 A Yes.

10 Q Can you tell us what you discussed in that meeting?

11 A We talked about some guns.

12 Q What did you say about guns?

13 A I think, I had just got, I had just got a .45 and I was
14 telling him about that, but I had needed another gun. And I was
15 asking him can he get me another gun.

16 THE COURT: Why did you need another gun?

17 THE WITNESS: I was going to use it.

18 THE COURT: That may seem like a stupid question.

19 THE WITNESS: I was going to use it.

20 THE COURT: But you already had a .45, you said.

21 THE WITNESS: I was going to use it so I needed another
22 one.

23 THE COURT: In other words, you were going to get rid
24 of the .45 after you used it?

25 THE WITNESS: Yes.

1 THE COURT: I see. All right. And approximately when
2 was this conversation in the car? As best you can recall.

3 THE WITNESS: It wasn't too long before he got
4 arrested.

5 THE COURT: Okay.

6 BY MR. HARDING:

7 Q What, if anything, did Mr. Martin say?

8 A He was going to look into it, getting me another gun.

9 Q What kind of gun?

10 A He didn't say.

11 Q Well, did he say he had a gun available?

12 MR. CROWE: Objection.

13 THE COURT: Overruled. You may answer.

14 A He didn't say he had a gun available. He talked about a .40
15 caliber that he had and said he always used it and got about
16 three bodies on it. But he didn't say it was available.

17 Q Okay. But he said --

18 THE COURT: All right. Now can you question the
19 witness about the March alibi? I just don't understand when that
20 came up in the context.

21 Q Okay. Actually, did you hear about the murder of -- well,
22 you don't know these names perhaps, Darryl and Anthony Wyche?
23 Did you hear about murders of a couple of drug dealers in a car?

24 A No.

25 Q Okay. Subsequently --

1 THE COURT: I'm sorry. Subsequently to what? If he
2 didn't hear about it.

3 Q Okay. After this meeting that you had in the car with Wayne
4 and Gardner and Aaron Holly that you just told us about, were you
5 still involved in a plan to rob Goose?

6 A Yes.

7 Q Did there come a time when Mr. Martin got arrested?

8 A Yes.

9 Q If I told you that was April 17th, 2002, would that sound
10 about right?

11 A Yes.

12 Q Okay. Was Mr. Gardner also briefly arrested around the same
13 time?

14 A Yes.

15 Q And you told us a few moments ago about a conversation that
16 you had with Mr. Gardner immediately after he got out of jail, is
17 that correct?

18 A Yes.

19 Q What were you doing at that time when you had the
20 conversation?

21 A As far as, what you mean? As far as what I was doing?

22 Q What were you and Mr. Gardner doing? Where were you and
23 what were you doing?

24 A I don't remember where we was at.

25 Q Okay.

1 A We probably was getting high.

2 Q Okay. Is it then that Mr. Gardner told you about this --

3 MR. CROWE: Objection.

4 Q -- alibi that was going to --

5 THE COURT: Rephrase the question.

6 Q Did you have a discussion, you've already told us about this
7 discussion that you had with Mr. Gardner. Was there anybody else
8 present when Mr. Gardner told you about this alibi, as you called
9 it?

10 A E.

11 Q Aaron Holly was present?

12 A Yes.

13 Q And tell us again what Mr. Gardner told you.

14 A Well, he was just coming home. And he basically was telling
15 us basically what happened, how Wayne and Bo got arrested, what
16 was all said, what the detectives said and everything.

17 THE COURT: And why did they get arrested?

18 THE WITNESS: They was arrested for murder and robbery.

19 THE COURT: Do you know of whom?

20 THE WITNESS: No. He never stated the name. So if he
21 did, I didn't pay it no mind.

22 THE COURT: All right. Did it surprise you?

23 THE WITNESS: No.

24 THE COURT: Why didn't it surprise you?

25 THE WITNESS: That's what they do.

1 BY MR. HARDING:

2 Q And so he told you about a movie theater, is that correct?

3 A He told me that Wayne was going to be all right because
4 Wayne had charged some movie tickets to his credit card. That
5 was going to be his alibi. So he was supposed to be at the
6 movies during the time that the murder and stuff went down.

7 Q Okay. Now, were you involved in drug trafficking in the
8 months preceding that?

9 A Drug trafficking?

10 Q Yeah. Were you selling any drugs?

11 A Yes.

12 Q Where?

13 A Edmondson Avenue, Lanvale and Payson, Laretta and Monroe.
14 All through that area.

15 Q Was Mr. Holly involved with you?

16 A Yes.

17 Q Was Mr. Gardner also involved in selling drugs at that time?

18 A Yes.

19 Q Was he involved, was he also using Mr. Holly at that time?

20 A Yes.

21 Q Was Mr. Holly selling for both of you in Catonsville at that
22 time?

23 A Yes.

24 Q On Winters Lane?

25 A Yes.

1 Q Okay.

2 THE COURT: All right. Thank you, Mr. Harding. Any
3 questions?

4 MR. COBURN: Yes, Your Honor.

5 THE COURT: Wait a minute. And I expect it to be
6 brief, counsel. This is not discovery.

7 CROSS EXAMINATION

8 BY MR. LAWLOR:

9 Q Understood. Sir, how are you? Am I correct in saying that
10 the statements that you're here discussing were made to you by
11 Mr. Gardner?

12 A Yes.

13 Q Okay. And you didn't rob, you never were involved in any
14 robberies with Mr. Mitchell?

15 A No.

16 Q All right. You say you don't know when he was arrested?

17 THE COURT: Who's he?

18 Q Mr. Mitchell. Forgive me.

19 A Not, not the date or nothing, no.

20 Q All right. So you were involved, you recall that Mr.
21 Gardner and Mr. Holly were incarcerated as of the beginning of
22 June of 2002, correct?

23 A Repeat that again. I didn't understand you.

24 Q Sure. The Spence robbery and homicide was in June of 2002,
25 right?

1 A Yes.

2 Q And you were involved in the planning of that with Mr.
3 Gardner and Mr. Holly for some time leading up to June?

4 A Yes.

5 Q You hadn't seen Mr. Mitchell or talked to Mr. Mitchell at
6 any time --

7 A No.

8 MR. HARDING: I'm going to object.

9 THE COURT: Overruled. Go ahead, Mr. Lawlor.

10 MR. LAWLOR: Your Honor --

11 THE COURT: Go ahead, Mr. Lawlor. Go ahead. Go ahead.

12 BY MR. LAWLOR:

13 Q Do you recall seeing Mr. Mitchell at all, in fact, in 2002?

14 A No.

15 Q All right. Do you recall, prior to 2002, when the last time
16 was that you saw Mr. Mitchell?

17 A It's been a while.

18 Q So, and I'm not trying to pin down, but to the best of your
19 recollection, you hadn't seen him in 2002 at all?

20 A No.

21 Q All right. Had you seen him at all even in 2001?

22 A No.

23 Q 2000?

24 A I believe so.

25 Q All right. So it was a couple years prior to 2002 was the

1 last time that you saw Mr. Mitchell?

2 A Right.

3 Q All right. And you didn't, for lack of a better term, you
4 didn't have business dealings with him then, right?

5 A No.

6 Q Okay. Court's indulgence, please.

7 That's all. Thanks.

8 THE COURT: All right.

9 CROSS EXAMINATION

10 BY MR. CROWE:

11 Q Good afternoon, Mr. Montgomery. I represent Shelly Martin.

12 Did it make any difference in your plans whether Mr.
13 Martin or Mr. Martin and Mr. Mitchell or Mr. Martin and Mr.
14 Mitchell and Mr. Gardner had an alibi for the murders?

15 A As far as the robbery of Goose?

16 Q Yeah.

17 A Yes.

18 Q And why was that?

19 A Because that was his thing.

20 Q Okay. It wasn't that he had some specific information that
21 you needed to effect the robbery of Goose, was it?

22 A I believe he did. I believe he was more closer to Goose
23 than I was.

24 Q But you, in fact, were aware yourself of where Goose could
25 be found every day, is that correct?

1 A Right.

2 Q Now, you have made several statements to the police, is that
3 correct?

4 A Yes.

5 Q Some of those have been statements where you have simply sat
6 down and people have, people have asked you questions, is that
7 right?

8 A Yes.

9 Q And there are other statements, there are other instances
10 where you have sat down and people have not only asked you
11 questions, but they've eventually taped the statement that you
12 have, is that correct, also?

13 A Yes.

14 Q And there have been, you've had at least one appearance in
15 front of a federal grand jury, is that right, also?

16 A Yes.

17 Q Let me ask you if the following is true. Were you meeting,
18 were you meeting with law enforcement authorities in September of
19 2002?

20 A Yes.

21 Q And did you, in fact, make a statement to law enforcement
22 authorities at that time that a guy named Goose runs Pulaski and
23 Hollins?

24 A I believe so, yes.

25 Q And what do you mean by runs Pulaski and Hollins?

1 A I mean, he was supplying them.

2 Q Pardon?

3 A I mean he was supplying them with drugs.

4 Q You mean he was supplying dealers at Pulaski and Hollins?

5 A Yes.

6 Q And --

7 THE COURT: Note sure where this is going, Mr. Crowe.

8 Q Did you further say that Montgomery was supposed to assist
9 Wayne and Goo in a home invasion in Randallstown on Princely Way?

10 A Princely Way is where I told him I seen Goose go into a
11 house.

12 Q And did you further tell the authorities on that occasion
13 that you were not aware who the victim was supposed to be at that
14 time?

15 A No, I knew who the victim was.

16 Q Did you tell them --

17 THE COURT: Mr. Crowe, I'm sorry. I don't see where
18 this is going.

19 Q I'd just like to show this witness a debriefing memorandum
20 which was prepared by law enforcement authorities following his
21 debriefing on September 26th of 2002. I will be fairly direct on
22 this. Page Five.

23 THE COURT: It's going to come you on that monitor, Mr.
24 Montgomery.

25 Q Can you see that? Sometimes there's difficulty coordinating

1 these monitors.

2 A Yes.

3 Q Do you say Montgomery advised a guy named --

4 THE COURT: Point to the provision, please, Mr. Crowe.

5 Q You see where it says Montgomery advised a guy named Goose
6 runs Pulaski and Hollins. And Montgomery is supposed to assist
7 Wayne and Goo in a home invasion in Randallstown on Princely Way,
8 unknown victim.

9 A Yes.

10 Q Did you, in fact, tell law enforcement authorities that you
11 didn't know who the victim was going to be?

12 A No.

13 Q Your testimony is just that they got that wrong, is that
14 correct?

15 A Right.

16 THE COURT: Now Mr. Harding is showing people how to
17 use the equipment.

18 MR. CROWE: I'm regressing.

19 THE COURT: No, Mr. Harding is progressing.

20 MR. HARDING: Thank you, Your Honor.

21 BY MR. CROWE:

22 Q That may be, also. Why -- what is your, why do you believe,
23 why do you, do you have a belief as to why it was that Mr.
24 Gardner was supposedly, had supposedly agreed to participate in
25 the robbery and attempted murder of Darius Spence?

1 A Why do I believe?

2 Q Yeah.

3 A He needed some money. Needed to help Wayne with a lawyer.

4 Q Okay. In fact, you recall testifying before the grand jury?
5 Do you recall testifying before grand juries twice in this
6 district?

7 A Twice?

8 Q Yeah.

9 A Nah, I don't recall.

10 Q Do you recall, do you recall testifying once?

11 A Yeah.

12 Q Okay. Do you recall testifying on that occasion that the
13 reason that Mr. Gardner was participating was because he had lost
14 a couple of thousand dollars?

15 A No. I don't recall that.

16 Q Just have a moment find the reference, Your Honor.

17 This is on Page 20 of the January 14th, 2004
18 transcript. I'm sorry. It's Page 22. You see up at Line Two?
19 Is that, is that, can you see the full thing on your screen?

20 A Yes.

21 Q Question: Did Mr., did Goo tell you anything about an alibi
22 that Martin had? Answer: Yes. What did he tell you? The alibi
23 supposed to have been that they was at the movies with some girls
24 that night or that day. Wayne had charged the movie tickets on
25 his credit card so they had some receipts or something.

1 Question: Okay. So he had a paper record of the fact
2 that he had gone to the movie? Martin did?

3 I'm sorry, Your Honor. That's the wrong passage. Let
4 me just continue on that.

5 Did he actually go to the movie, do you know? I don't
6 actually know if they went to the movie. I would think not.

7 Now, is it true, sir, that what you told the jury, what
8 you told the grand jury was that Mr. Martin had gone to, had gone
9 to the movies with a couple of girls?

10 A That I told them that he went to the movies with a couple
11 girls? Is that what you asking me?

12 Q Yeah.

13 A No. I told them that was the alibi.

14 Q You told them the alibi was that he had gone to the movies
15 with a couple of girls, is that correct?

16 A I don't know if he went or not. I wouldn't think so.

17 Q But you told them that the alibi was that he went to the
18 movie with a couple of girls, is that correct?

19 A Right.

20 Q Now, getting back to the question I was originally asking
21 you. What I really meant to do was to direct you to a question
22 and answer session you had with an Assistant State's Attorney by
23 the name of Dean Stocksdales. You remember that, do you not?

24 A Yes.

25 Q And in fact, Mr. Stocksdales was, was he not, the lawyer who

1 actually prosecuted Mr. Gardner and Aaron Holly in Baltimore
2 County. Do you recall that, also?

3 A Yes.

4 THE COURT: What was the outcome of Mr. Holly's case?

5 MR. CROWE: Both, both individuals were convicted, Your
6 Honor.

7 THE COURT: Were they tried jointly?

8 MR. CROWE: They were tried jointly.

9 BY MR. CROWE:

10 Q And do you, in fact, recall that sometime around January,
11 2003, that you came into this courtroom and in the U.S.
12 Attorney's Office, had an interview with Mr. Stocksdales and a
13 bunch of other people?

14 A Yes.

15 MR. HARDING: What page.

16 Q That was Page One. I'm going to Pages 10 and 11. Do you
17 recall being asked the question by Mr. Stocksdales: Was there a
18 particular reason that Gardner was or was part of this plan?
19 Answer: Um, E, who would be Aaron Holly, told him about it. He
20 had took a nice fall about that time.

21 Mr. Stocksdales: And when you said he took a nice fall,
22 who are you referring to? Your answer is Goo.

23 And then you are asked: What do you mean, he took a
24 nice fall? Answer was, he took a couple of thousand. Do you see
25 that?

1 MR. HARDING: Lost. Lost.

2 Q He lost a couple of thousand. Do you see that?

3 A Yeah.

4 Q Was, in fact, the reason that Mr. Gardner agreed to
5 participate in this plan not because he was looking for money to
6 fund legal fees for Mr. Martin but rather, as you testified here,
7 he had lost a couple of thousand dollars?

8 A That was part of the reason.

9 Q So part of the reason -- so you say that's only part of the
10 reason?

11 A Yes.

12 Q Okay. But part of the reason was that he had lost a couple
13 of thousand dollars, is that correct?

14 A Yes.

15 Q In fact, you've never participated in any sort of home
16 invasion robbery with Mr. Martin, had you?

17 A No.

18 Q And the fact that Mr. Martin dropped out of this matter
19 didn't really slow down your activities at all, did they?

20 A No.

21 Q You murdered a man in May of 2002, didn't you?

22 A Yes.

23 MR. HARDING: Objection.

24 THE COURT: Sustained. I think you're concluded, Mr.
25 Crowe.

1 MR. CROWE: Thank you, Your Honor.

2 THE COURT: Thank you. Briefly, Mr. Coburn.

3 MR. COBURN: Absolutely, Your Honor. Thank you.

4 CROSS EXAMINATION

5 BY MR. COBURN:

6 Q Just to let Your Honor know, we're going in order during
7 this proceeding. But with the Court's permission, all the other
8 defendants, as we did with the last witness, have consented to
9 let us go first in crossing Mr. Montgomery before the jury.

10 THE COURT: All right.

11 Q With the Court's permission.

12 THE COURT: All right.

13 Q Mr. Montgomery, I'm Barry Coburn. Just a very few questions
14 for you. Do you remember during the course of your direct
15 examination by Mr. Harding, the gentleman sitting over here to my
16 left, you mentioned that there was a time, I think you said at a
17 gas station, where you were talking to Mr. Martin and he, did you
18 say he was wearing off some liquor?

19 A Yes.

20 Q Where was the gas station located?

21 A Woodmoor Shopping Center.

22 THE COURT: Closer to the mike, please, Mr. Montgomery.

23 A Woodmoor Shopping Center.

24 Q Now, how much time passed between that conversation and what
25 Mr. Harding then asked you about the subsequent discussion that

1 happened in the car when you all were talking about some guns?

2 How much time in between those two things?

3 A I couldn't be sure.

4 Q Can you give us an estimate, your best estimate?

5 A A couple weeks.

6 Q Okay. And on both of those occasions it's your testimony
7 and response again to Mr. Harding's questions that you all were
8 talking about the planned home invasion robbery of Goose, is that
9 correct?

10 A Right.

11 Q Okay. Then, also in response to one of Mr. Harding's
12 questions, you indicated that there was, in fact, a home invasion
13 that you participated in together with Mr. Gardner, right?

14 A Right.

15 Q And that was the home invasion that led to the death of
16 Tonya Jones-Spence, right?

17 A Right.

18 Q How much time passed between that second conversation, the
19 one in the car, and the time Ms. Spence was killed?

20 A I couldn't be sure.

21 Q The home invasion robbery that led to the death of Ms.
22 Spence, that had nothing to do with the attempted or the planned
23 home invasion of Goose, is that correct?

24 A No.

25 Q Is that right?

1 A Right.

2 Q Thank you. Nothing further, Your Honor.

3 THE COURT: All right. The Court is satisfied that the
4 government has satisfied its burden. I'll spell out in greater
5 detail at a subsequent time the reasons. But having heard the
6 testimony here in this hearing, the Court is satisfied that the
7 government may proceed. We'll have the jury, please.

8 MR. LAWLOR: Your Honor, can we just get, Your Honor,
9 and I'll submit something in writing --

10 THE COURT: Just one moment, Ms. Arrington.

11 MR. LAWLOR: Forgive me, Your Honor. I don't want to
12 belabor this because I know you're trying to bring the jury in,
13 and I'll put something in writing. I'm not clear what statements
14 the government intends to introduce that will implicate Mr.
15 Mitchell or are purportedly statements Mr. Mitchell made which
16 are supposedly going to be relayed through this witness, again
17 through Mr. Gardner.

18 THE COURT: Well, everything the government introduces
19 is intended to implicate Mr. Mitchell, as it is intended to
20 implicate Mr. Harris --

21 MR. LAWLOR: Fair enough.

22 THE COURT: -- Mr. Martin and Mr. Gardner. Now, what's
23 clear is that there are a number of different conspiracies in
24 this case, some of which are sub-conspiracies of larger
25 conspiracies. So one might say, well, that's not really a

1 different conspiracy because a sub-conspiracy of a larger
2 conspiracy is a part of that larger conspiracy.

3 So I don't know, and I'm sure you all don't know
4 ultimately how many conspiracies at the end of the day, meaning
5 at the end of the trial, will have been proven. But it all is
6 probative evidence, some of greater probative value than other.
7 But it's all admissible against all the defendants.

8 Now, the Court will give a multiple conspiracy
9 instruction. I'm sure it will be requested. And the Court, as I
10 said before, is certain to give it.

11 MR. LAWLOR: "Implicate" probably was the wrong word.

12 THE COURT: But clearly, what the government is trying
13 to prove primarily is a RICO conspiracy and a drug conspiracy,
14 which is a subset of that RICO conspiracy. But clearly, there's
15 some other, as I say, sub-conspiracies.

16 MR. LAWLOR: Right.

17 THE COURT: But I'm satisfied on this record at this
18 hearing that there were conspiracies of which Mr. Montgomery was
19 a part, of which Mr. Gardner was a part, of which Mr. Martin was
20 a part, and that conspiracy certainly appears prima facie to be a
21 subset of a larger conspiracy.

22 MR. LAWLOR: Your Honor --

23 THE COURT: Ultimately, it will be up for the jury to
24 parse this all out under my instructions. I don't know if I'm
25 being responsive. I'm trying.

1 MR. LAWLOR: No, you are. I used the wrong word
2 because you're right about the implication comment. I think for
3 a Bruton analysis, though, I don't have an objection, for
4 example, what Mr. Gardner said Mr. Martin says that thereby
5 negatively affects Mr. Martin directly. I do, though, have an
6 objection --

7 THE COURT: But if it's in furtherance -- I'm sorry to
8 cut you off. But if it's in furtherance of a conspiracy of which
9 Mr. Mitchell is a part, there's no Bruton problem.

10 MR. LAWLOR: Yet you stole the words out of my mouth.
11 That's our objection here. I only came up to ask for a
12 continuing objection so as to not belabor the jury coming out.
13 And I can flesh this record out later. Our point is Mr. Mitchell
14 is not a member of this conspiracy and, therefore, that's one of
15 predicates to 801(d)(2)(e).

16 THE COURT: Right. So I guess, in effect, what you'd
17 be asking for but for my ruling is a limiting instruction to the
18 jury at the appropriate time during Mr. Montgomery's testimony,
19 among other things.

20 MR. LAWLOR: Yeah, because I think it --

21 THE COURT: In addition to a severance, I understand
22 that.

23 MR. LAWLOR: Yeah. Repeated severance request, number
24 30.

25 THE COURT: Okay. You have a continuing objection, as

1 do all of the defendants, with respect to the coconspirator
2 statements.

3 MR. LAWLOR: All right. Thank you.

4 THE COURT: All right. Mr. Montgomery, when the jury
5 is seated you'll be asked again to stand and be sworn. Please
6 continue to keep your voice up and speak directly into the
7 microphone.

8 (Jury enters the courtroom.)

9 THE COURT: Ladies and gentlemen of the jury, good
10 afternoon, and thank you for the umpteenth time for your
11 patience. We're ready to continue. Government may call its next
12 witness.

13 MR. HARDING: Yes. Thank you, Your Honor. The United
14 States calls William Montgomery.

15 THE COURT: Would you stand and be sworn, Mr.
16 Montgomery?

17 WILLIAM MONTGOMERY, GOVERNMENT'S WITNESS, SWORN

18 THE WITNESS: I do.

19 THE CLERK: Be seated. Scoot up. Speak directly
20 toward the mike. State your name and spell it for the record.

21 THE WITNESS: William Montgomery. W-I-L-L-I-A-M.
22 M-O-N-T-G-O-M-E-R-Y.

23 DIRECT EXAMINATION

24 BY MR. HARDING:

25 Q Good afternoon, Mr. Montgomery. Mr. Montgomery, can you

1 tell us how old you are, sir?

2 A 28.

3 Q And where did you grow up?

4 A Baltimore City.

5 Q How far did you get in school?

6 A Ninth grade.

7 Q And what school was that that you got through ninth grade or
8 into the ninth grade in?

9 A Walbrook High.

10 Q Where's Walbrook High located?

11 A Baltimore City.

12 Q Okay. Have you been convicted of crimes, Mr. Montgomery?

13 A Yes.

14 Q Can you tell us what crimes you've been convicted of and
15 roughly when they took place?

16 A I've been convicted of murder, first degree murder. That
17 took place in '02. I've been convicted of two handguns, state
18 and federal. And a robbery.

19 Q Okay. Are you in the Federal Witness Protection Program,
20 Mr. Montgomery?

21 A Yes.

22 Q Are you locked up?

23 A Yes.

24 Q You said that you pled guilty or you were convicted of
25 murder, is that correct?

1 A Yes.

2 Q Okay. I have three documents here that I'd like to call to
3 your attention. The first is Government Exhibit P-17. Do you
4 see that on the screen in front of you, Mr. Montgomery?

5 A Yes.

6 Q Does that have your, your name along, with a lot of other
7 signatures on Page Two?

8 A Yes.

9 Q Do you recognize this as a proffer letter that was given to
10 you in July of 2002 after you got arrested?

11 A Yes.

12 Q Was Mr. John G. Sakellaris your attorney, Mr. Montgomery?

13 A Yes.

14 Q Do you have another attorney?

15 A Joan Fraser.

16 Q Okay. Let me show you also Government Exhibit P-2. You
17 recognize this document, Mr. Montgomery?

18 A Yes.

19 Q Does this one also have your signature on the last page?

20 A Yes.

21 Q Is this a plea agreement that you entered in 2003 to a
22 federal handgun charge?

23 A Yes.

24 Q And finally, I have Government Exhibit P-3. Can't make this
25 out very well. But does this have your signature on it, also?

1 A Yes.

2 Q Is this the plea agreement that you entered to first degree
3 murder in Baltimore City in 2003?

4 A Yes.

5 Q And it's signed by Joan Fraser. Is she the attorney in your
6 state murder case and Mr. Sakellaris your attorney in the federal
7 case?

8 A Correct.

9 Q Okay. Now, let me ask you first about the first document in
10 time, which is signed, which is dated July 17th, 2002. Do you
11 see that?

12 A Yes.

13 Q How long had you been locked up when you signed this proffer
14 letter and agreed to come in and talk to government
15 representatives?

16 A Two weeks maybe.

17 Q Okay. When you were locked up, do you remember what the
18 charge was that you were locked up for?

19 A Violation of probation and a handgun.

20 Q Okay. And then was the handgun case taken federally?

21 A Yes.

22 Q And is that how you wound up with the federal handgun charge
23 that we just saw your plea agreement for?

24 A Yes.

25 Q And then while you were still locked up for that, is that

1 when the state murder charge came down?

2 A Yes.

3 Q And you wound up pleading guilty around the same time to
4 both the murder charge and the gun charge, is that correct?

5 A Yes.

6 Q Now, do you understand that this proffer letter essentially
7 assures you that --

8 MR. COBURN: Objection, leading.

9 Q Well, it's in evidence, Your Honor. I'm happy to simply
10 read it.

11 THE COURT: You can summarize it for us, Mr. Harding,
12 but don't lead the witness. But you can summarize the proffer
13 letter.

14 Q Does this first paragraph provide that, essentially, with a
15 couple of exceptions that are detailed in Paragraphs Two and
16 Three, nothing you say will be used against you?

17 A Right. Yes.

18 Q Okay. So after you signed this proffer letter with these
19 prosecutors, do you see that the U.S. attorney was actually not
20 me or Mr. Hanlon, but a guy named James Green? Do you see that?

21 A Yes.

22 Q And both of your attorneys signed this proffer letter, is
23 that correct?

24 A Yes.

25 Q And this is your signature right here, is it not, Mr.

1 Montgomery?

2 A Yes.

3 Q You know whose signatures these are?

4 A Looks like my lawyer's.

5 Q Did you have more lawyers than Mr. Sakellaris and Mr. Fraser
6 (sic)?

7 A No.

8 Q Okay. In any event, after you signed this letter, did you
9 begin to cooperate and reveal what you knew to law enforcement
10 people about your criminal activities?

11 A Yes.

12 Q Okay. And then the next document in time is actually your
13 state murder plea, which is May of 2003, is that correct?

14 A Yes.

15 Q Is this what's known as a cooperation plea agreement, Mr.
16 Montgomery?

17 A Yes.

18 Q Okay. Does it provide that the defendant agrees to
19 cooperate with the State on the following terms and conditions?
20 Let me just run through these with you, Mr. Montgomery. The
21 defendant represents that he has fully and truthfully responded
22 to all questions put to him by federal, state and local law
23 enforcement authorities during all prior proffer sessions. The
24 defendant shall continue to cooperate fully with the state, and
25 the United States Attorney's Office, and so on, providing full,

1 complete and candid information concerning the activities of
2 himself and others concerning all matters about which law
3 enforcement officers inquire.

4 Is that correct, Mr. Montgomery?

5 A Yes.

6 Q Then it also provides that you're to turn over any documents
7 or evidence that are relevant.

8 Paragraph B provides a little more detail along the
9 same lines. And so does Paragraph C. It provides that if they
10 ask you to do something in an undercover capacity, you will agree
11 to wear a wire or record conversations if they ask you to, is
12 that correct?

13 A Yes.

14 Q And then it says that you will testify truthfully in grand
15 juries and at trial, is that correct?

16 A Yes.

17 Q And then there's some other conditions that are spelled out,
18 such that you shall commit no further crimes. And then it says
19 you will enter pleas of guilty to the first count of an
20 indictment charging you with the first degree murder of Terry
21 Cheeks, as well as the second count, which charges you with use
22 of a handgun in the commission of a crime of violence. Do you
23 see that?

24 A Yes.

25 Q And then it says the defendant expresses that he fully

1 understands that the maximum penalty for Count One is life
2 imprisonment and that the maximum penalty for Count Two is twenty
3 years imprisonment, with a mandatory minimum of five years
4 imprisonment without parole. Correct?

5 A Yes.

6 Q And then the next paragraph, Paragraph H, provides that
7 you're also going to plead to this gun charge in federal court.
8 Is that correct?

9 A Yes.

10 Q And that that charge carries a maximum of ten years
11 imprisonment, as well as a possible fine. Do you see that?

12 A Yes.

13 Q And then it goes on to say some things that the State of
14 Maryland is going to do in connection with this. First of all,
15 it's going to, at your sentencing on this murder charge, inform
16 the Court of all sorts of things about your cooperation and all
17 other information about your background, character, conduct and
18 so on. Do you see all that?

19 A Yes.

20 Q Including any failure by you to fulfill any and all of your
21 obligations pursuant to the agreement. Correct?

22 A Yes.

23 Q And then it says what the State agrees to do pursuant to
24 this agreement, which is sort of like a contract, is that right,
25 Mr. Montgomery?

1 A Yes.

2 Q It says, first of all, that since you're pleading in the
3 state charge, you won't be prosecuted in federal court for the
4 homicide of Terry Cheeks. Is that correct?

5 A Yes.

6 Q And then it says that it's going to bring to the Court's
7 attention all of this information. And then in Paragraph C comes
8 the key provision, right, Mr. Montgomery? At the defendant's
9 sentencing the State will make a recommendation regarding the
10 sentence the defendant shall receive based upon the extent of the
11 defendant's cooperation pursuant to this agreement. If the
12 defendant completes all of the terms and conditions set forth in
13 this agreement to the satisfaction of the State, the State will
14 recommend that the defendant receive a maximum sentence of life
15 imprisonment, with all but a cap of 40 years suspended, followed
16 by five years' supervised probation upon your release. The State
17 will have sole discretion in determining whether to make such a
18 recommendation.

19 Is that correct?

20 A Yes.

21 Q And then there's some other provisions about how -- did you
22 have a violation of probation case pending at that time?

23 A Yes.

24 Q And at this time you're going to get this cap of 40 years,
25 was going to run concurrently to any time you got for the

1 violation of probation?

2 A Yes.

3 Q And then it promises you the same thing that your proffer
4 letter promised you; namely, that your statements are not going
5 to be used against you. Correct?

6 A Yes.

7 Q And then there are these other provisions about, it's up to
8 the State to decide whether you've completely fulfilled your
9 obligations. It's understood that the defendant, if you commit
10 any more crimes, that would constitute a violation of this
11 agreement? And then it says 4-A, the State may recommend to the
12 Court any sentence that the State considers appropriate up to and
13 including the maximum prison sentence allowable by law, which is
14 imprisonment for a term of life plus 20 years. Is that your
15 understanding of what would happen if you were to violate the
16 terms of this cooperation plea agreement?

17 A Yes.

18 Q And then it also says you'd be subject to prosecution by
19 state or federal authorities for a variety of different kinds of
20 crimes that it lists here. Do you see that, in Subparagraph B?

21 A Yes.

22 Q Bottom line, Mr. Montgomery, what does this agreement
23 require from you?

24 A Just to tell the truth.

25 Q And bottom line, what do you have to do pursuant to this

1 agreement? I'm sorry. What do you hope to get pursuant to this
2 agreement?

3 A Nothing, nothing but what the plea agreement says.

4 Q Who's going to sentence you, Mr. Montgomery?

5 A The judge.

6 Q Has anybody promised you what the judge is going to sentence
7 you to?

8 A No.

9 Q By the way, this judge is not Judge Davis, is it? It's
10 going to be a state court judge, is that correct?

11 A Right.

12 Q Do you know the name of the judge, by any chance?

13 A Wanda Heard.

14 Q Okay. And do you have any idea what kind of sentence she's
15 going to give you, apart from what's stated in this plea
16 agreement, which is that there's a cap of 40 years?

17 A No.

18 Q Okay. With the federal handgun charge, Mr. Montgomery,
19 which you entered in 2003, have you actually already done your
20 time for the federal handgun charge?

21 A Yes.

22 Q What kind of sentence did you get on that?

23 A Close to three years.

24 Q Okay. That was a charge that you possessed a firearm and
25 you weren't allowed to because you were a felon, is that correct?

1 A Yes.

2 Q Okay. Where did you go to elementary school, Mr.
3 Montgomery?

4 A I went to two elementary schools. I went to Woodmoor
5 Elementary and I went to Scotts Branch Elementary.

6 Q While you were in elementary school, did you meet a man by
7 the name of Shelly Wayne Martin?

8 A Yes.

9 Q Do you see him in the courtroom here today?

10 A Yes.

11 Q Could you point him out to us, please, and indicate what
12 kind of clothing he's wearing?

13 A He got the black shirt on (indicating).

14 Q May the record reflect that the witness has identified the
15 defendant, Shelly Wayne Martin, Your Honor?

16 THE COURT: So noted.

17 Q Which of those schools did you meet Mr. Shelly Wayne Martin
18 at?

19 A Woodmoor.

20 Q Wiltmore?

21 A Woodmoor.

22 Q Woodmoor. Okay. And so how old would you have been when
23 you first met Shelly Wayne Martin?

24 A Six, something like that. I don't know.

25 Q Was he older than you or younger than you?

1 A He was older.

2 Q Do you know how much older?

3 A A couple years.

4 Q A couple of years. Did you also get to know a man by the
5 name of Shawn Gardner?

6 A Yes.

7 Q Do you see him in the courtroom here today?

8 A Yes.

9 Q Could you point him out to us?

10 A White shirt (indicating).

11 Q May the record reflect that the witness has identified Shawn
12 Gardner, Your Honor?

13 THE COURT: So noted.

14 Q Did Shawn Gardner have a nickname?

15 A Goo.

16 Q Okay. What about Shelly Wayne Martin? What did you call
17 him?

18 A Wayne.

19 Q Okay. What school were you in when you met Shawn Gardner?

20 A Scotts Branch.

21 Q Elementary school?

22 A Yes.

23 Q So you've known him from a very young age, also?

24 A Yes.

25 Q Let me show you what's been marked as Government Exhibit

1 PH-40. Is that a picture of Scotts Branch Elementary School?

2 A Yes.

3 Q Where is that located, Mr. Montgomery?

4 A Randallstown.

5 Q Did you get to know a man by the name of Willie Mitchell?

6 A No.

7 Q Did you get to know a man by the name of Bo?

8 A Yes.

9 Q You see Bo in the courtroom here today?

10 A Yes.

11 Q Where is Bo?

12 A Gray shirt (indicating).

13 Q Where did you meet Bo?

14 A Scotts Branch Elementary.

15 Q You've known him since you were a kid, also?

16 A Yes.

17 Q Did you met a man by the name of Darryl Bacon?

18 A Yes.

19 Q How old were you when you met him?

20 A Maybe 12, 13.

21 Q And where were you in school, if you were in school, when
22 you met him?

23 A Johnnycake Middle.

24 Q Johnnycake Middle School?

25 A Yes.

1 Q So you met him sometime later than these three people you've
2 just identified in this courtroom, is that correct?

3 A Yes.

4 Q I'm showing you PH-70. Can you identify who that is?

5 A That's Darryl Bacon.

6 Q Where's Johnnycake Middle School located, Mr. Montgomery?

7 A Catonsville.

8 Q Catonsville. Okay. Did you get to know a man by the name
9 of Aaron Holly?

10 A Yes.

11 Q Can you tell us how old you were when you got to know Aaron
12 Holly?

13 A About the same age. 12, 13.

14 Q Was there any connection between Aaron Holly and Darryl
15 Bacon?

16 A Cousins.

17 Q They were cousins?

18 A Yes.

19 Q What was Aaron Holly's nickname, if you know?

20 A E.

21 Q E like the letter E of the alphabet?

22 A Yes.

23 Q I'm showing you Government Exhibit S-59. Can you identify
24 that?

25 A That's E.

1 Q That's E?

2 A Yes.

3 Q Did there come a time, Mr. Montgomery, when you started
4 dealing drugs?

5 A Yes.

6 Q Do you recall about -- well, let me ask you this. What
7 drugs did you get involved in trafficking?

8 A Coke, marijuana, heroin.

9 Q Okay. What about crack? Have you ever dealt crack?

10 A Yes.

11 Q Okay. When you were first starting out in this business,
12 where did you used to sell?

13 A Catonsville.

14 Q Any particular place in Catonsville?

15 A Winters Lane.

16 Q Winters Lane?

17 A Yes.

18 Q What drug were you selling on Winters Lane?

19 A Crack.

20 Q Let me show you Government Exhibit PH-66, which is already
21 in evidence, I believe. Do you recognize this?

22 A That's Winters Lane.

23 Q And here's another shot. This is PH-22. Do you recognize
24 this?

25 A Same road.

1 Q Same road?

2 A Yes.

3 Q Can you see on this picture where you used to stand when you
4 sold crack on Winters Lane?

5 A I used to stand in front of this bar right here. This red
6 building. One of the spots. I can't see the corner down there.

7 Q Okay. But I made a spot on the screen. Do you see that?

8 A Yeah.

9 Q Is that the bar you're talking about, that red building?

10 A Yes.

11 Q Who supplied you with crack when you were first selling
12 crack on Winters Lane in Catonsville?

13 A Goo.

14 Q Mr. Gardner?

15 A Yes.

16 Q Can you give us an idea how much crack he used to supply you
17 with at a time?

18 A An ounce.

19 Q Was Mr. Gardner older than you?

20 A Yes.

21 Q Do you know how much older?

22 A A couple years.

23 Q Okay. Did you buy the crack from him or did you get it on
24 consignment or what?

25 A Yes, on consignment.

1 Q Can you explain what that means?

2 A He'd front it to me.

3 Q Okay. What does "front" mean?

4 A He gave me the ounce, told me to bring him back 800, 850.

5 I'm not sure what it was at that time.

6 Q \$800 or \$850, because that was what he wanted back from you
7 for an ounce of crack?

8 A Yes.

9 Q And that means that you would have an opportunity to go sell
10 crack and raise the money before you had to pay him back, is that
11 correct?

12 A Yes.

13 Q So how much would you make on an ounce of crack doing that?

14 A Depends on what I bagged up. I'm not sure.

15 Q Okay. But presumably, you made a profit. So --

16 A Yes.

17 Q Okay. And then you say you sold other drugs there, also, is
18 that correct?

19 A Not out there.

20 Q Not out in Catonsville?

21 A No.

22 Q But you started selling heroin, you said, and marijuana?

23 A Yes.

24 Q Did you ever get pills of crack from Shelly Wayne Martin?

25 A One time, yes.

1 Q Okay. Can you tell us how much you got?

2 A I don't remember. A bag full of pills.

3 Q Okay.

4 A Vials.

5 Q Let me, calling your attention back to the 1990's. Did you
6 have a gun at that time?

7 A Yes.

8 Q When did you get your first gun?

9 A 11, 12.

10 Q How about Shelly Wayne Martin? Did he have a gun?

11 A During those times?

12 Q Yes.

13 A I wouldn't know but I believe so.

14 MR. CROWE: Objection, move to strike.

15 THE COURT: The jury should disregard the witness'
16 speculation.

17 BY MR. HARDING:

18 Q Did there come a time when Shelly Wayne Martin got guns?

19 A Yes. He got me a gun, yes.

20 Q He got you a gun?

21 A Yes.

22 Q How old were you when he got you a gun?

23 A Maybe 16, 17.

24 Q Okay. How did he go about getting you a gun?

25 A He went, he went to some dude in Winchester Apartments and

1 got me a gun.

2 Q Did you go with him?

3 A Yeah. I went to the apartment but I didn't go inside the
4 house with him.

5 Q Did you meet the dude he was getting the gun from?

6 A No.

7 Q Did you give him money for the gun?

8 A Yes.

9 Q What kind of gun was it?

10 A A .380.

11 Q Do you remember how much money you gave to Mr. Martin to buy
12 the gun for you?

13 A No.

14 Q Okay. A .380. Okay. How about Mr. Gardner, did he have
15 guns?

16 A Yes.

17 Q Did he usually carry a gun?

18 A Yes.

19 Q Did there come a time when you started selling drugs in
20 Baltimore City, not just in Catonsville?

21 A Yes.

22 Q When you started selling in Baltimore City, what locations
23 did you sell at?

24 A Laretta and Monroe, Edmondson and Pulaski, Lanvale and
25 Payson.

1 Q Three different spots?

2 A More than that, but I just named a few.

3 Q Okay. I've got Government Exhibit PH-47 on the screen. Can
4 you tell us what that is?

5 A Laretta and Monroe.

6 Q Did you have a relative who lived up there, Mr. Montgomery?

7 A Yes. My grandmother.

8 Q What part of Baltimore City is that in?

9 A West.

10 Q Okay. Would you say southwest or northwest?

11 A Southwest.

12 Q Okay. May I have a word with the agent, Your Honor?

13 THE COURT: Certainly.

14 (Pause in Proceedings.)

15 Q Mr. Montgomery, did Shelly Wayne Martin and Goo, Mr.
16 Gardner, and Bo, Mr. Mitchell, go to New York for drugs?

17 MR. CROWE: Objection, Your Honor.

18 THE COURT: Overruled. You may answer.

19 A Yes.

20 Q Did you go with them sometimes?

21 A Yes, but only one time with Bo.

22 Q Only one time with Bo?

23 A Yes.

24 Q Did you go -- how many times did you go with Mr. Martin and
25 Mr. Gardner?

1 A A couple. A few different times.

2 Q A few different times?

3 A Yes.

4 Q Can you tell us what drugs you were going to New York to
5 buy?

6 A They would go buy coke, sometimes weed. I would go buy
7 weed.

8 Q Okay. When was this? Can you tell us what years or how old
9 you were when you were doing this?

10 A I first started going up with them in '97.

11 Q And so how long did you continue going up there with them?

12 A On and off for probably since, till 2000.

13 Q Until 2000?

14 A Yes.

15 Q So over the course of three years?

16 A Right.

17 Q And who drove on these -- or let me ask you first. How did
18 you get up there?

19 A We drove.

20 Q Did you always drive every single time?

21 A Yes.

22 Q And who drove?

23 A Darryl drove sometimes. Bo drove the one time he went, that
24 I went with him. Goo drove.

25 Q Okay. Did it ever happen that the people who would go up

1 there on these trips to New York to buy drugs would buy drugs for
2 other people who weren't in the car?

3 A Yes.

4 Q For example?

5 A There was a time when me, Goo and Darryl went up and I knew
6 that they was buying coke for Wayne.

7 Q Okay. Did you ever go to New York alone, Mr. Montgomery?

8 A No.

9 Q Why did you always go with a group of guys?

10 A To be safe.

11 Q Did you take a gun or guns with you when you would go to New
12 York on these trips?

13 A Yes.

14 Q How many?

15 A One.

16 Q Always one gun?

17 A Yes.

18 Q Did you hide the gun somewhere?

19 A I didn't hide it but, yes, it was always a gun in the car
20 hidden.

21 Q Okay. Where would the gun be hidden?

22 A Under the carpet.

23 Q Like, for example, was there some special place in Mr., in
24 Goo's car where he would hide a gun?

25 A It would be under the carpet.

1 Q Under the carpet. Which car are we talking about now?

2 A That would be the Honda Accord wagon. Station wagon.

3 Q Honda Accord station wagon?

4 A Yes.

5 Q And there was a place under the carpet where you could
6 conceal a gun?

7 A Yes.

8 Q Well, did it cause a bump in the carpet or was there some --

9 A No.

10 Q There was some kind of receptacle underneath the carpet, is
11 that correct?

12 A Yes.

13 Q Okay. What about Shelly Wayne Martin? Did he have a spot
14 in a vehicle where he hid a gun?

15 A Yes.

16 Q Where was that?

17 A Same spot, under the carpet.

18 Q And so was there also a receptacle in his vehicle for
19 holding a gun?

20 A Yes.

21 Q Darryl Bacon, did he have such a thing?

22 A Yes.

23 Q What kind of car did he have?

24 A A Benz.

25 Q Okay. What about Shelly Wayne Martin? I don't know that I

1 elicited what kind of car he had. What kind of car did he have?

2 A A Cressida Toyota.

3 Q Toyota Cressida?

4 A Yeah.

5 Q Okay. Which vehicle did you usually go in?

6 A The Honda Accord wagon.

7 Q So Goo's car?

8 A Yes.

9 Q You said that when you went up with these guys, they usually
10 bought cocaine, is that correct?

11 A Yes.

12 Q What was the largest amount they ever bought?

13 A A half a key.

14 Q Okay. Is that, are you referring to, of the times when you
15 went with them?

16 A Yes.

17 Q Half a key is half a kilo, is that correct?

18 A Yes.

19 Q How much would a half a kilo cost in New York?

20 A Maybe, what, nine, 10,000.

21 Q Okay. Do you know, did they buy larger quantities on trips
22 when you didn't go?

23 MR. COBURN: Objection, no foundation.

24 THE COURT: Sustained.

25 Q Did they ever tell you about larger quantities that they

1 made, that they purchased in New York on trips when you weren't
2 there?

3 MR. CROWE: Objection.

4 THE COURT: You can answer yes or no.

5 THE WITNESS: Yes.

6 THE COURT: Do you know who told you this?

7 THE WITNESS: I heard Goo talk about it.

8 THE COURT: All right. Overruled.

9 BY MR. HARDING:

10 Q You can answer.

11 A I heard Goo talk about buying keys.

12 Q Whole kilos?

13 A Yes.

14 Q Okay. When you went up there with these guys, did you and
15 they pool your money together so you could get a better deal on
16 drugs or did you just buy drugs individually?

17 A They pooled their money together.

18 Q Meaning who?

19 A Goo, Wayne, Darryl.

20 Q Okay. You said that Bo went on one of these trips and drove
21 the time that you went with him, is that correct?

22 A Yes.

23 Q Did he pool his money with anybody, as far as you know?

24 A I believe so.

25 Q Who with?

1 A Wayne and Goo.

2 Q Okay. And we're talking about the time period from '97 to
3 2000, is that correct?

4 A Yes.

5 Q Did they go on other trips when you weren't present during
6 that time period?

7 A Yes.

8 Q Okay. Where did you go in New York to buy these drugs?

9 A Manhattan.

10 Q Whereabouts in Manhattan?

11 A Like 142nd, all up and down there.

12 Q You know the names of any of the people that you guys bought
13 drugs from?

14 A No.

15 Q You were telling us about how you also started selling drugs
16 in Baltimore City, and you named several locations. Did Aaron
17 Holly help you sell drugs?

18 A In Baltimore City? Yes.

19 Q Yes. Whereabouts in Baltimore City?

20 A Edmondson and Pulaski.

21 Q So what exactly would happen? Would you supply him with
22 drugs?

23 A Yes.

24 Q Would you front them the way Goo fronted you with drugs or
25 did you sell the drugs to him and then he would just sell it?

1 A You can say I fronted him the way Goo fronted them to me.

2 Q Okay. What drug was he selling for you on Edmondson Avenue?

3 A Heroin.

4 Q Did he also sell for you elsewhere?

5 A Catonsville.

6 Q Oh, so you stopped selling yourself in Catonsville and got
7 him to sell for you. Is that what happened?

8 A Yeah, sometimes.

9 Q Okay. What drug did he sell for you in Catonsville?

10 A Crack.

11 Q Was that on Winters Lane, that street we looked at earlier?

12 A Yes.

13 Q Did Aaron Holly also work for Mr. Gardner?

14 A Yes.

15 Q What did he do for Mr. Gardner?

16 A Sold crack for him.

17 Q Where?

18 A Winters Lane.

19 Q So he sold crack on Winters Lane for both you and Mr.
20 Gardner?

21 A Yes.

22 Q Do you have any idea how much he could sell for you on
23 Winters Lane, say, in a day or in a week?

24 A A couple hundred a day.

25 Q Couple of hundred what's in a day?

1 A Yeah. A couple hundred dollars a day.

2 Q Okay. Same thing for Mr. Gardner or did Mr. Gardner give
3 him more?

4 MR. COBURN: Objection, no foundation.

5 Q If you know.

6 THE COURT: Overruled. You may answer.

7 A Same thing. A couple hundred.

8 Q Okay. Did Mr. Gardner have guys who sold for him in the
9 city, also?

10 A Yes.

11 Q Whereabouts in the city?

12 A He had some guy up Park Heights, South Baltimore, near West
13 Side Shopping Center.

14 Q Okay. Do you know what drugs he sold in those locations in
15 the city?

16 A Crack and heroin.

17 Q This is Park Heights and also the West Side Shopping Center
18 area, is that correct?

19 A Yes.

20 Q What part of town is that in?

21 A West Side Shopping Center?

22 Q Yeah.

23 A South Baltimore.

24 Q Okay. I have, I have a map here. Just so that we can get
25 it straight about some of these locations you've been talking

1 about, Mr. Montgomery.

2 The court reporter is going to be mad at me for not
3 speaking in a microphone, so can I get a lavalier microphone?

4 THE COURT: We've got a stand alone right there.

5 Q Thank you. Okay. You told us about Winters Lane in
6 Catonsville. Is that right down there where I'm pointing right
7 now, Mr. Montgomery? It's actually labeled so it's not much of
8 a --

9 A Yes.

10 Q Okay. And you told us about Lauretta and Monroe, right
11 about here. Is that correct?

12 A Yes.

13 Q That's in Southwest Baltimore and it's not too far from
14 Edmondson Avenue, is that correct?

15 A Yes.

16 Q Because Edmondson Avenue runs, doesn't it run east/west
17 along in here? There it is right there. Edmondson Avenue,
18 correct?

19 A Yes.

20 Q Okay. Now, where's the West Side Shopping Center? You
21 can't see it?

22 A No.

23 Q Do you know what street it's on?

24 A No.

25 Q Okay. Is it down here in Southwest Baltimore somewhere?

1 A Yes.

2 Q All right. I think those are all the questions I have for
3 you right now about the map. Do you know the name of the guy who
4 sold for Mr. Gardner in Park Heights?

5 MR. COBURN: Objection, foundation.

6 THE COURT: Overruled. You may answer.

7 A No.

8 Q Did I ask you this? What drugs did Mr. Gardner sell in the
9 city, if you know?

10 MR. COBURN: Objection, foundation.

11 THE COURT: Overruled. You may answer.

12 A Crack and heroin.

13 Q And you said he was, he was selling crack in Catonsville
14 through Aaron Holly, is that correct?

15 A Yes.

16 Q What drug was he selling in Park Heights specifically?

17 A Sometimes heroin, and crack.

18 Q Okay. When Mr. Holly was selling crack in Catonsville for
19 you and Mr. Gardner, did he cook it up himself or did you and Mr.
20 Gardner supply it to him already cooked up as crack?

21 A We gave it to him already cooked up.

22 Q Okay. Do you know, did Mr. Gardner cook up powder cocaine
23 into crack?

24 A Yes.

25 Q Okay. And did you cook up powder cocaine into crack?

1 A No.

2 Q So you would buy it already as crack?

3 A Yes.

4 Q Okay. Did Mr. Gardner also have a store in Baltimore that
5 he used for drug trafficking?

6 A Yes.

7 Q Where was that located?

8 A McKean and Westwood.

9 Q Okay. Is that in Southwest Baltimore, also?

10 A Yes.

11 Q Let me show you what's been marked as Government Exhibit
12 PH-49.

13 THE COURT: I think you need the eraser there, Mr. --
14 thank you.

15 Q Maybe I should take this out of the envelope except -- I
16 could just focus it a little more. Do you recognize what this
17 is, Mr. Montgomery?

18 A Look like the store.

19 Q And that's at McKean and Westwood, is that correct?

20 A Yes.

21 Q Actually, I should have done this when we had the map up but
22 I'll try to do it real quickly. And I'll just leave it here, if
23 that's all right with you. McKean and Westwood is actually
24 labeled on this map, also, if I recall correctly. McKean and
25 Westwood is right around here, just below Druid lake, Druid Hill

1 Park. Do you see that, Mr. Montgomery?

2 A Yes.

3 Q What kind of drugs did Mr. Gardner sell out of that store on
4 McKean and Westwood?

5 A Marijuana.

6 Q Was anybody in that business with him, in the store business
7 with him?

8 A Darryl.

9 Q Darryl Bacon?

10 A Yes.

11 Q What about Wayne Martin, Shelly Wayne Martin? Do you know
12 where he sold his drugs or who sold for him?

13 A He sold his drugs South Baltimore and Randallstown.

14 Q Whereabouts in Randallstown?

15 A Savoy Apartments.

16 Q The Savoy Apartments?

17 A Yeah.

18 Q Do you know, did those get torn down at some time?

19 A Yes.

20 Q Okay. Did Mr. Martin live at one time in the Savoy
21 Apartments?

22 A Yes.

23 Q And you said he sold in the city, also, in Southwest
24 Baltimore, is that correct?

25 A Yes.

1 Q Whereabouts in Southwest Baltimore?

2 A Same area, by the shopping center.

3 Q Same one you sold near, West Side Shopping Center?

4 A I never sold near there.

5 Q Oh. It's where Mr. Gardner sold?

6 A Yes.

7 Q Did he have somebody who sold for him in Baltimore?

8 MR. CROWE: Objection.

9 THE COURT: Overruled. You may answer.

10 A Only one I can remember right now is Xavier.

11 Q Xavier?

12 A Yes.

13 Q Is that his first name or his last name?

14 A I believe it's his first name.

15 Q Okay. You don't know his last name?

16 A No.

17 Q And he was working for Mr. Martin in the sense that Mr.
18 Martin would front him drugs?

19 A Yes.

20 Q Do you know what kind of drugs Mr. Martin fronted to him?

21 A Crack, I believe.

22 Q Okay. Would that have been in Southwest Baltimore or
23 Randallstown?

24 A I'm not sure if he sold for him out Randallstown. But
25 Southwest Baltimore I know for sure.

1 Q Southwest Baltimore?

2 A Yes.

3 Q Okay. And did you say he sold both cocaine and crack, Mr.
4 Martin?

5 A I said crack.

6 Q Crack. Okay. Do you know, did Mr. Gardner or Mr. Martin
7 sell heroin?

8 A Yes. I know them to deal with it a for a little bit of
9 time.

10 Q Where would they sell their heroin?

11 MR. CROWE: Objection.

12 THE COURT: Overruled.

13 A I known Goo to sell some at Park Heights.

14 Q Okay.

15 A And Wayne down West Side Shopping Center.

16 MR. CROWE: Your Honor, the objection was to the
17 characterization of "their heroin."

18 THE COURT: The objection is overruled.

19 Q Did there come a time when you and Mr. Gardner and Mr.
20 Martin and also Bo got involved in robberies?

21 A Yes.

22 Q Were those three guys, Bo, Wayne, and Mr. Gardner, Goo,
23 involved in robberies before you were?

24 A Yes.

25 Q How do you know about it?

1 A They told me stories.

2 MR. LAWLOR: Objection, Your Honor, move to strike.

3 THE COURT: Can you be a little more specific, Mr.
4 Montgomery? Who told you stories?

5 THE WITNESS: Goo, Darryl.

6 THE COURT: Go ahead. I'm sorry.

7 THE WITNESS: Goo and Darryl.

8 THE COURT: And who would be present?

9 THE WITNESS: Bo wasn't present. But Goo, he'd be
10 present, I would be present, Darryl.

11 MR. LAWLOR: Move to strike, Your Honor.

12 THE COURT: The jury should disregard the witness'
13 testimony that Mr. Gardner told him stories insofar as it may not
14 be considered against Mr. Mitchell, who was not present. Go
15 ahead, Mr. Harding.

16 MR. CROWE: Your Honor, also Mr. Martin.

17 THE COURT: And Mr. Martin. And of course Mr. Harris.
18 Go ahead, Mr. Harding.

19 BY MR. HARDING:

20 Q When did, when did you do a robbery? When did you first do
21 a robbery with any of these defendants, if you can remember?

22 A I don't remember the date or nothing like that, the year.

23 Q Okay. Just tell us what happened.

24 A I think it was me, me, Goo, Wayne and Darryl and Ategra
25 (phonetic), we was going to get some weed. And a dude come out

1 the house counting some money. Me and Goo jumped out and robbed
2 him.

3 Q Did you have a gun?

4 A I don't know who carried the gun back then. But yes, we had
5 a gun.

6 Q You wouldn't have done the robbery without a gun, I suppose,
7 right?

8 A Right.

9 Q You say the dude came out of the house counting some money.
10 Do you mean the house where you were going to buy some weed?

11 A Yes.

12 Q Was he the guy who was dealing weed in the house or was
13 he --

14 A Don't know.

15 Q -- a customer or what?

16 A I don't know.

17 Q You just saw the money and decided that that was a good
18 target, is that it?

19 A Right.

20 Q And you said that you and Goo jumped out of the car, is that
21 correct?

22 A Yes.

23 Q What did Darryl and Mr. Martin do?

24 A They was in the car.

25 Q They stayed in the car?

1 A Yes.

2 Q Do you remember what you got in this robbery?

3 A A couple hundred dollars.

4 Q Okay. Was there another time when you, or other times when
5 you got involved in robberies with any of these three defendants
6 or Darryl Bacon?

7 A There was another time when I got in with Darryl Bacon.

8 Q What did you do?

9 A We robbed some people down South Baltimore.

10 Q What kind of people?

11 A Drug dealers.

12 Q Did you have a gun?

13 A Yes.

14 Q Did you both have guns or just you?

15 A Just me.

16 Q And how much money did you get when you robbed these South
17 Baltimore drug dealers?

18 A I don't remember.

19 Q Okay. Did you have occasion to use that gun on one of those
20 robberies with Darryl Bacon?

21 A Use it how?

22 Q Any way at all.

23 A Yes.

24 Q What did you do?

25 A I had to pistol whip one of the dudes.

1 Q Okay. So you didn't fire it, you pistol whipped him, is
2 that correct?

3 A Yes.

4 Q Did you tell me what you got out of these robberies?

5 A No.

6 Q What did you get?

7 A Out of that robbery?

8 Q Yeah.

9 A Some money and some drugs.

10 Q Okay. You don't remember how much money or how much drugs?

11 A No.

12 Q Let me ask you. Did you or any of these other people you've
13 talked about get shot on any of these occasions?

14 A No.

15 Q Did there come a time when you got shot?

16 A Yes.

17 Q Tell us how you got shot.

18 A I got shot on Laretta and Monroe.

19 Q Okay. Do you know, can you tell us how you got shot?

20 A Don't know. Somebody rolled up behind me, shot me.

21 Q Okay. Did you go to the hospital?

22 A Yes.

23 Q Did anybody come and visit you in the hospital?

24 A Yes.

25 Q Who?

1 A Wayne, Goo, and Darryl.

2 Q Okay. Did there come a time when Darryl got shot?

3 A Yes.

4 Q Tell us about that.

5 A I was still in the hospital. Darryl came down there and
6 Wayne and Goo. And he was taking stuff out my room for his
7 wound. And he was telling me about the shooting they got into at
8 the gas station.

9 Q What gas station?

10 A Amoco.

11 Q What did he tell you about the shooting he got into?

12 A Somebody started shooting at him. He got hit and Goo had to
13 get the dude up off of him.

14 Q How did Goo get the dude up off of him?

15 A Shooting back.

16 Q Goo shot at the guy?

17 A Yes.

18 Q Did he hit him, do you know?

19 A Don't know.

20 Q Okay. Did Darryl go to the hospital on that occasion?

21 A No.

22 Q He wasn't hurt very badly?

23 A No.

24 Q Okay. You've talked a lot about Goo and Wayne and, to a
25 lesser extent, E and Bo and Darryl.

1 MR. COBURN: Objection to characterization.

2 THE COURT: Overruled. Go ahead, Mr. Harding.

3 Q Did you guys tell one another when you got into beefs with
4 other people?

5 A Yes.

6 Q Were there times when you guys got into beefs with other
7 people?

8 A Yes.

9 Q Would you help these people that I just named if they got
10 into beefs?

11 A If they needed me, yes.

12 Q Would they help you if you needed them?

13 A I believe so, yes.

14 Q How did you think of yourselves?

15 A I thought of us as a, a family.

16 Q Did you have a leader in this family?

17 A No.

18 Q Do you remember an occasion -- well, let me ask you this.
19 Did you know a guy by the name of Smokey?

20 A Yes.

21 Q Do you know his real name?

22 A Michael Gaffney.

23 Q Michael Gaffney?

24 A Yes.

25 Q Did there come a time in 1999 when he got shot?

1 A Yes.

2 Q Did you get into a beef as a result of that?

3 A Yes.

4 Q With who?

5 A Corey Smith, Tyree.

6 Q Corey Smith and Tyree?

7 A Yes.

8 Q Do you know Tyree's last name?

9 A Stewart.

10 Q Tyree Stewart?

11 A Yes.

12 Q And what line of work were Corey Smith and Tyree Stewart
13 involved in?

14 A Selling drugs.

15 Q Okay. Did you discuss your -- first let me ask you, why did
16 you get in a beef with those guys as a result of the shooting of
17 Smokey?

18 A They shot family.

19 Q They shot somebody that you regarded as family, namely
20 Smokey, is that correct?

21 A Yes.

22 Q Did they kill him?

23 A No.

24 Q Okay. But just shooting him was bad enough, is that
25 correct?

1 A Yes.

2 Q Did you discuss this beef that you were having with any of
3 the defendants that you've identified in this courtroom?

4 A Yes.

5 Q Who?

6 A Goo.

7 Q Anybody else?

8 A No.

9 Q Did you -- why did you tell Goo about it?

10 A Just in case something happened.

11 Q What did you want to have happen if something happened?

12 A Retaliation.

13 Q Retaliation?

14 A Yes.

15 Q Okay. Did there come a time when you got locked up in the
16 year 2000, Mr. Montgomery?

17 A 2000?

18 Q Yeah.

19 A Yes.

20 Q What were you locked up for?

21 A For house raid, robbery, violation of probation.

22 Q How long did you stay locked up for?

23 A Till '01, till end of '01.

24 Q Till the end of '01?

25 A Yeah. Around there.

1 Q Okay. After you got out, did you run into Shelly Wayne
2 Martin?

3 A Yes.

4 Q Where?

5 A At a Shell gas station.

6 Q Okay. Was he, where was he staying at the time? Did he
7 tell you?

8 A He was still in a halfway house.

9 Q Oh, was he just coming home from a stint, also?

10 A Yes.

11 Q Do you know what halfway house he was in?

12 A No.

13 Q This is at the end of '01 or the beginning of '02 or what?

14 A I believe beginning of '02.

15 Q Okay. Sorry. Did you tell us where this Shell gas station
16 was located?

17 A Woodmoor Shopping Center.

18 Q Wiltmore Shopping Center?

19 A Woodmoor Shopping Center.

20 Q Where's that located?

21 A Woodlawn.

22 Q What was Mr. Martin doing when you ran into him?

23 A Half asleep in a car.

24 Q His car?

25 A Yes.

1 Q What kind of car was he driving at that time?

2 A A little white car.

3 Q Okay. Did you have a discussion with him?

4 A Yes.

5 Q What did you discuss?

6 A What he was up to and basically what he was getting into.

7 Came about robbing Goose.

8 Q It came about robbing Goose?

9 A Yes.

10 Q So what do you, what are you telling us? Did you develop a
11 plan to do a robbery?

12 A First I told him I want in.

13 Q You told him you want in?

14 A Yes.

15 Q Whose idea was this robbery?

16 A Wayne's.

17 Q Who is Goose?

18 A A drug dealer.

19 Q Okay. Is he a big drug dealer or a little drug dealer?

20 A Big drug dealer.

21 Q Do you know his name?

22 A No.

23 Q Do you know where he operated?

24 A Hollins and Pulaski, down that area.

25 Q So that's southeast Baltimore, is that right?

1 A Still west, I believe.

2 Q Still west. You said Highland and Pulaski?

3 A Hollins and Pulaski.

4 Q Hollins and Pulaski. I'm sorry. And so what kind of drugs
5 did Goose traffic in?

6 A Coke, heroin.

7 Q Okay. Did you ever get drugs from Goose?

8 A No.

9 Q How about Wayne?

10 A I don't know.

11 Q Goo? Did Goo get drugs from Goose?

12 A I don't know.

13 Q Okay. Have you ever met Goose?

14 A Yes.

15 Q Do you know what he looks like?

16 A Yes.

17 Q How long have you known Goose?

18 A Since maybe '93.

19 Q Since you were quite young, then, is that correct?

20 A Yes.

21 Q Let me show you PH-69. Can you identify this guy?

22 A That's Goose.

23 Q Okay. So what was your plan with Mr. Martin that you
24 developed at that meeting at the Shell gas station regarding
25 robbing Goose? What kind of robbery was it going to be?

1 A Home invasion.

2 Q Home invasion. Well, did you know where Mr., where Goose
3 lived?

4 A No, I had told him that I know a house where he go to, that
5 he might live there.

6 Q And where was that house?

7 A Out Randallstown.

8 Q Okay. Did Wayne have any connection with Goose that could
9 help you in figuring out where he lived or how to do this
10 robbery?

11 MR. CROWE: Objection.

12 THE COURT: Overruled. You may answer.

13 A Yes. They were friends.

14 Q They were friends?

15 A Yes.

16 Q Okay. Did there come a time after that when you ran into
17 Goose when you were with some other people?

18 A When I was with Goo? Yes.

19 Q When you were with Goo you ran into Goose?

20 A Yes.

21 Q Was anybody else with you?

22 A E was in the car.

23 Q E, you mean Aaron Holly?

24 A Yes.

25 Q Well, tell us what happened when you ran into Goose.

1 A Goo didn't want him to see me.

2 Q Why not?

3 A Because I'm known for robbing people.

4 Q You're known for robbing people?

5 A Yes.

6 Q So Goo didn't want Goose to see you because you're known for
7 robbing people?

8 A With him.

9 Q Oh, Goo didn't want Goose to see you with Goo?

10 A Right.

11 Q Why?

12 A Because I guess he didn't want to put him on point.

13 Q And tell the jurors what that means exactly.

14 A Make him aware or make him nervous or suspicious.

15 Q Well, did Goose, in fact, see you?

16 A I don't think so, no.

17 Q Okay. Was Goo concerned about this, anyway?

18 A Yes.

19 Q How were you going to go about figuring out where Goose
20 lived and how to do this robbery?

21 A That was all on Wayne part, basically.

22 Q Sorry?

23 A I said that was all on Wayne part, basically. But I figure
24 we probably would follow him or something. They would call him
25 up or something. I don't know.

1 Q Okay. Did you say it was Wayne's part? Why was it Wayne's
2 part?

3 A It was his thing.

4 Q Okay. Was he the closest one to Goose?

5 A No. I wouldn't say that.

6 Q Somebody else was also equally close?

7 A Goo was.

8 Q Goo was, too?

9 A Yes.

10 Q So Goo was part of this plan, also?

11 A Yes.

12 Q Okay. Did there come a time when you and Goo and Wayne and
13 Aaron Holly had another discussion about this?

14 A Another discussion about what?

15 Q Well, let me put it this way. Did you and Goo and Wayne and
16 Aaron Holly have a discussion in a car one night?

17 A Yes.

18 Q Where were you located at the time?

19 A It was in front of Aaron house.

20 Q Aaron Holly's house?

21 A Yes.

22 Q Where did he live?

23 A Off of Winters Lane.

24 Q Off of Winters Lane. So in Catonsville?

25 A Yes.

1 Q Okay. Where were, whose car was it that you were meeting
2 in?

3 A Wayne's.

4 Q When kind of car was Wayne driving at the time?

5 A A little white car.

6 Q Okay. Who was actually driving the car that night?

7 A Goo.

8 Q And so where was Wayne?

9 A Passenger seat.

10 Q And where were you?

11 A Me and E was in the back seat.

12 Q Okay. Did you, did there come a time when you said you
13 needed something?

14 A Yes. I told him I needed another gun.

15 Q Okay. Did anybody respond to your request?

16 A He said he would look into it.

17 Q Who's "he?"

18 A Wayne.

19 Q Okay. Did he tell you anything else?

20 A He started talking about the .40 caliber he had, that had
21 three bodies on it. He always keep it, always use it when he
22 need it.

23 Q So he brought up a .40 caliber gun that he had in his
24 possession at the time that had three bodies on it?

25 A Yes.

1 Q What does it mean to have three bodies on it?

2 A Murdered three people with it.

3 Q Did he offer you the .40 caliber gun even though it had
4 three bodies on it?

5 A No.

6 Q But he nevertheless said he'd look into getting a gun for
7 you?

8 A Yes.

9 Q Did he, in fact, get a gun for you?

10 A No.

11 Q Well, what did you do about that?

12 A I got another gun.

13 Q What kind of gun?

14 A 9 millimeter.

15 Q Why did you need a gun at that time?

16 A Why did I need a gun?

17 Q Well, let me ask you this. Did you already have a gun at
18 that time?

19 A Yes.

20 Q What kind of gun?

21 A .45.

22 Q Well, then, why did you need another gun?

23 A I was going to use it.

24 Q You were going to use the .45?

25 A Yes.

1 Q And what were you going to use it on?

2 A Murder.

3 Q You were going to do a murder?

4 A Yes.

5 Q What murder were you going to do?

6 A Darius.

7 Q You were going to use it on Darius Spence?

8 A Yes.

9 Q So you were already thinking about doing a homicide of
10 Darius Spence?

11 A Yes.

12 Q Okay. Tell us who Darius Spence is.

13 A Drug dealer.

14 Q Were you going to also rob Darius Spence?

15 A Yes.

16 Q And so you sort of set aside the .45 to use on that robbery
17 and you didn't want, you needed something else for other
18 purposes, is that correct?

19 MR. COBURN: Objection, leading.

20 THE COURT: Overruled. You may answer.

21 A Yes.

22 Q Did Wayne tell you anything more about this .40 caliber that
23 had three bodies on it?

24 A No.

25 Q Did you have any discussion with him about why it might be

1 unwise to use a gun for anything that already had three bodies on
2 it?

3 A No.

4 Q Is there anything unwise about doing that?

5 A I think so.

6 Q What?

7 A I think it can be traced.

8 Q It can be traced. You could be linked to other crimes, is
9 that correct?

10 A Yes.

11 Q Is that why you didn't want to use the .45 for anything more
12 than the robbery you were planning of Darius Spence?

13 A Yes.

14 THE COURT: Good point, Mr. Harding?

15 MR. HARDING: Yes. Yes.

16 THE COURT: We'll take a brief recess, ladies and
17 gentlemen. Please leave your note pads on your chairs. Have no
18 discussion about the case or any of the evidence you've heard so
19 far. Continue to keep an open mind.

20 Jury's excused for a 15 minute recess. We're in recess
21 for 15 minutes.

22 (Recess at 4:07 p.m.)

23 (Jury not present in the courtroom.)

24 THE COURT: Mr. Montgomery, is anybody in the courtroom
25 bothering you?

1 THE WITNESS: No.

2 THE COURT: All right. You will let the Court know if
3 that happens?

4 THE WITNESS: Yes.

5 THE COURT: Can we go back to the document camera? Mr.
6 Harding.

7 MR. HARDING: Yes.

8 THE COURT: What, if anything; who, if anybody; where,
9 if at all; how, if at all; why, if you know? Let's hear a little
10 more of that. Okay?

11 MR. HARDING: Sure, Your Honor.

12 THE COURT: All right. Jury, please.

13 MR. MARTIN: I think the ghost of Judge Murray is in
14 the courtroom somewhere.

15 THE COURT: I'm channeling Judge Murray. Would you
16 like some water, Mr. Montgomery?

17 THE WITNESS: No, I'm good.

18 THE COURT: All right. Please stay as close as you can
19 to the microphone.

20 (Jury enters the courtroom.)

21 THE COURT: Whenever you're ready, Mr. Harding.

22 BY MR. HARDING:

23 Q Thank you, Your Honor. Mr. Montgomery, you were telling us
24 that you had a .45 that was dedicated to another purpose and you
25 asked Wayne for a gun that he never got for you. Did you get

1 another gun?

2 A Yes.

3 Q What kind of gun and from whom and for what purpose?

4 A Don't recall who I got it from. But it was a 9 millimeter.

5 Q Okay. And so why did you need that gun, anyway?

6 A I needed to keep a gun on me.

7 Q Okay. Did you wind up using that 9 millimeter for another
8 purpose?

9 A Yes.

10 Q What?

11 A Killing of Terry Cheeks.

12 Q So is that the killing that you pled guilty to in the state
13 case that we looked at at the beginning of your testimony today?

14 A Yes.

15 Q And you did that murder with a 9 millimeter?

16 A Yes.

17 Q Okay. Do you know, Mr. Montgomery, did Wayne and Goo put in
18 work for Goose?

19 MR. COBURN: Objection, foundation.

20 MR. CROWE: Objection.

21 THE COURT: Overruled. You may answer.

22 A I don't know.

23 Q Okay. Did they ever discuss it?

24 A No.

25 Q Okay. When you had this conversation with Wayne about the

1 .40 caliber that had three bodies on it, in the car with Gardner
2 and Aaron Holly, was Wayne still in a halfway house at that time?

3 A I'm not sure.

4 Q Okay. At this time in the first part of 2002, were you guys
5 still selling drugs?

6 A Yes.

7 MR. CROWE: Objection.

8 THE COURT: Overruled.

9 Q Okay. Was Mr. Holly still working for you?

10 A Yes.

11 Q Whereabouts?

12 A Catonsville.

13 Q And what was he selling for you?

14 A Crack.

15 Q Was he also working for Mr. Gardner?

16 A Yes.

17 Q Selling what?

18 A Crack.

19 Q Also in Catonsville?

20 A Yes.

21 Q Do you know, was Mr. Gardner selling drugs elsewhere at that
22 time?

23 A I don't know.

24 Q Okay. Now, you mentioned that in addition to this plan to
25 rob and kill, were you going to kill Goose or just rob him?

1 A Kill him, too.

2 Q Okay. In addition to the plan to kill and rob Goose, you
3 had another plan to kill a guy named Darius Spence, is that
4 correct?

5 A Yes.

6 Q Can you tell us how that plan came up?

7 A Darius came to me one day. And I got in the car with him.
8 He asked me to go beat up some dude named Momma. I told him it
9 made no sense beating him up, he might as well pay me to kill
10 him. He said he would think about it. After that I got out of
11 the car. I asked my man Dirty what was up with Momma. I told
12 him what I told Darius. He told me not to kill him. So I told
13 Dirty tell Momma I want to speak to him.

14 Q Okay.

15 A Talked to Momma. I told Momma he might as well help me rob,
16 rob Darius because he going to get killed, anyway.

17 Q Okay. Let me back up just a bit.

18 You said that Darius came to speak to you and he came
19 by and picked you up in a car, is that correct?

20 A Yes.

21 Q Where did he pick you up?

22 A I was walking down Lanvale.

23 Q Okay. In what part of town on Lanvale?

24 A Lanvale and Appleton.

25 Q Is that in West Baltimore?

1 A Yes.

2 Q Okay. Did you, were you expecting Darius to come by and
3 pick you up?

4 A No.

5 Q Did he just spot you on the street?

6 A Yes.

7 Q Did you know Darius already?

8 A Yes.

9 Q From where?

10 A I knew him since I was a little boy.

11 Q From back in Randallstown?

12 A No. Edmondson Avenue.

13 Q Edmondson Avenue?

14 A Yes.

15 Q Okay. And why was it that he got you to get into his car
16 with him and have this discussion with him, if you know?

17 A I was known for fighting and stuff back in the day. So --

18 Q Okay. And he told you he wanted you to beat up a guy named
19 Momma, is that correct?

20 A Yes.

21 Q Do you know Momma's real name?

22 A No.

23 Q Let me show you a picture that's been marked S-60. Do you
24 know who that is?

25 A I can't see it.

1 Q Oh, it's not on your screen?

2 A Yeah. But --

3 Q But it's too dark?

4 A I see it. That's Momma.

5 Q Okay. Did he tell you why he wanted you to beat up Momma?

6 A He said Momma owed him some money.

7 Q Okay. And you said what?

8 A I told him he might as well pay me to kill him because if I
9 beat him up, Momma going to come back, anyway.

10 Q You were afraid that if you just beat up Momma, what would
11 happen?

12 A He would come back shooting.

13 Q I see. So what did Darius say when you proposed that you
14 kill Momma?

15 A He asked me how much. I told him 5,000. He said he'd think
16 about it.

17 Q Was that the end of the conversation?

18 A Pretty much, yeah.

19 Q Did this all occur in Darius's car?

20 A Yes.

21 Q What kind of car was it, anyway?

22 A He was driving, I think it was a Honda, gold Honda.

23 Q Okay. Now, did you, were you just driving around the block
24 with him on this occasion or were you --

25 A Yes.

1 Q Okay. But then you said when you got out of the car, you
2 spoke to your man Dirty, is that right?

3 A Yes.

4 Q Who is Dirty?

5 A Davon Washington.

6 Q And when you say he's your man, what do you mean by that?

7 A A friend.

8 Q He's a friend of yours?

9 A Yes.

10 Q And he was with you at that time when you were on Lanvale
11 and Appleton?

12 A Yes.

13 Q So, but he didn't get into the car with you, I guess, is
14 that correct?

15 A No.

16 Q Okay. When you got out of the car, you told Dirty what had
17 happened?

18 A Right.

19 Q And what did he say?

20 A He said Momma was cool and don't do him.

21 Q Do you know, was Dirty a friend of Momma's?

22 A Yes.

23 Q And he said, don't do him?

24 A Yes.

25 Q So what did you say?

1 A Tell Momma I want to talk to him.

2 Q Okay. Did he do that? Did Dirty get in touch with Momma
3 and tell him that --

4 A Yes.

5 Q How long after that was it that you had a conversation with
6 Momma?

7 A It wasn't long. Maybe a couple days.

8 Q Did you talk to him by telephone or did you meet with him?

9 A I flagged him down. He was driving when I was walking up a
10 block, I flagged him down.

11 Q So you already knew who this Momma guy was?

12 A Yes.

13 Q How did you know him?

14 A I've been knowing him for while now. He's from the
15 neighborhood.

16 Q That area around Lanvale and Appleton or what?

17 A Mosher and Monroe.

18 Q Mosher and Monroe. Did you know Momma's real name?

19 A No.

20 Q Okay. By the way, you said that Darius told you he wanted
21 Momma beaten up because he owed some money to Darius, is that
22 correct?

23 A Right.

24 Q Did Dirty tell you anything more about the relationship
25 between Darius and Momma?

1 A Dirty, Dirty say he fucking his wife.

2 Q Dirty said that Momma was having an inappropriate
3 extramarital relationship with Darius Spence's wife, is that
4 correct?

5 A Yeah.

6 Q Okay. And did Dirty tell you that as a way of explaining
7 why it was that Dirty might want to kill Momma?

8 A Say that again.

9 Q Well, why was it that Dirty told you that? Do you know?

10 A Because it didn't make no sense for Momma to owe Darius
11 money to us.

12 Q Why not?

13 A Because Momma was selling drugs, too. He was doing his own
14 thing.

15 Q So you didn't believe Darius about that, right?

16 A No.

17 Q Okay. So you say that a couple of days later you finally
18 met up with Momma, is that correct?

19 A Yes.

20 Q And you said that you flagged him down. When were you when
21 you flagged him down?

22 A Mosher and Monroe.

23 Q Okay. What happened when you flagged him down?

24 A He pulled over.

25 Q And what happened then?

1 A He got out of the car and I told him, I told him the reason
2 why I don't kill him because Dirty told me not to. I say, but
3 that's not going to stop Darius from getting somebody else to
4 kill him. So he might as well help me rob Darius and I'd kill
5 him in the process.

6 Q And whose idea was it to rob and kill Darius instead of
7 carrying out Darius's proposal to beat up Momma?

8 A Mines (sic).

9 Q That was your idea?

10 A Yes.

11 Q Why would it be a good idea to rob Darius?

12 A He was selling drugs. He had some money.

13 Q Okay. Did you have any idea how much money?

14 A Not at that time.

15 Q Did there come a time when you had an idea how much money he
16 had?

17 A Yeah. Momma told me that his wife told him, Darius wife
18 told him that she done seen him count almost a hundred thousand.

19 Q Okay. Where was it that she was, where she saw him counting
20 \$100,000?

21 A In the house, I guess.

22 Q Okay. Why didn't you just rob Darius? Why were you going
23 to kill him as well?

24 A He know who I am.

25 Q Okay. Why you did you tell Momma that you were going to rob

1 and kill Darius?

2 A To get his help.

3 Q Why did you need Momma's help?

4 A I didn't know where Darius lived at.

5 Q Did Momma know?

6 A He knew the building.

7 Q Okay. What did Momma say?

8 A About what?

9 Q About your idea that you would kill and rob Darius?

10 A He liked it.

11 Q I guess he liked it better than you killing him, didn't he?

12 A Right.

13 Q So did you reach any agreement?

14 A Yes. He agreed to help me, showed us where the house was
15 at, where the building, the apartment.

16 Q Okay. When you say "us", who are you talking about?

17 A Me, Goo, and E.

18 Q Okay. By this time, was Mr. Martin locked up?

19 A Yes.

20 Q Okay. Now, let me get back to the fact that Wayne had been
21 locked up. Did you also hear around this time that, did there
22 come a time when you heard that Bo was locked up?

23 A Yes.

24 Q And you say that Wayne was locked up, also, is that correct?

25 A Yes.

1 Q Do you know what they were locked up for?

2 A Murder.

3 Q Okay. Around the time that they got locked up, did Mr.
4 Gardner, Goo, also get locked up briefly?

5 A Yes.

6 Q Do you know what for?

7 A A warrant or something like that.

8 Q A warrant?

9 A Yes.

10 Q When you say -- how long was he locked up for?

11 A A couple days.

12 Q Just a couple days?

13 A Yes.

14 Q When he got out, did he have a conversation with you?

15 A Yes.

16 Q What did he say?

17 A Well, he was explaining to me why Bo and Wayne was locked
18 up.

19 Q What did he say?

20 A He said it was Bo fault that Wayne was locked up because Bo
21 or somebody must have, or the dude, the victim, must have pressed
22 a button on the phone and it recorded both saying, did you check
23 his pockets, Wayne, but Goo said Bo really said, did you check
24 his pockets, man?

25 Q Okay. So Mr. Gardner explained to you that it was Bo's

1 fault that both he and Wayne had gotten locked up?

2 A Yes.

3 Q Correct? And it was either because Bo pressed the button or
4 the victim pressed the button on a telephone?

5 A Yes.

6 Q And as a result of that, what happened?

7 A That statement got recorded.

8 Q Okay. And the statement was one, according to Mr. Gardner,
9 it was a statement that Bo made, right?

10 A Yes.

11 Q About not checking their pockets?

12 A Yes.

13 Q Wayne?

14 A Right.

15 Q Except that Mr. Gardner said it wasn't really 'Wayne' that
16 was said, is that correct?

17 A Right.

18 MR. COBURN: Objection, leading.

19 THE COURT: Overruled.

20 Q What did, according to Mr. Gardner, what was the word that
21 was uttered in that recording?

22 A Man.

23 Q Man. Okay. By the way, when Gardner was telling you this,
24 was anybody else present?

25 A E.

1 Q Aaron Holly?

2 A Yeah.

3 Q Did Mr. Gardner tell you anything about something Wayne and
4 Bo had done in preparation for this robbery?

5 A He said Wayne charged some movie tickets to his credit card
6 for the alibi.

7 Q He created an alibi by charging movie tickets to his credit
8 card?

9 A Yes.

10 Q Was anybody else involved in this alibi?

11 A I thought they all was involved.

12 Q When you say they all, who? Who do you mean?

13 A Wayne, Bo, and Goo.

14 Q Okay. And that's Goo that's telling you this story, right?

15 A Right.

16 Q Okay. Who did the murders, according to what Goo was
17 telling you?

18 A They never said who did it.

19 Q Okay. What was your understanding?

20 MR. LAWLOR: Objection.

21 THE COURT: Sustained.

22 Q Did Mr. Gardner think that he, did Mr. Gardner think that
23 Wayne would beat the charge?

24 MR. COBURN: Objection.

25 MR. CROWE: Objection.

1 THE COURT: Overruled. You may answer.

2 A Yes.

3 Q Why?

4 A Because of the alibi.

5 Q Was Mr. Gardner at all worried about being locked up
6 himself?

7 A For that? No.

8 Q Why not?

9 A I don't know.

10 Q Okay. Did Mr. Gardner tell you anything about drugs in
11 connection with his robbery?

12 A He said the detectives told him that they left a key under
13 the seat of the car.

14 Q Okay. Did Gardner say anything more about that?

15 A He said he ain't believe them.

16 Q Gardner didn't believe it, that they had left some drugs in
17 the car?

18 A No.

19 Q Okay. Do you know, did Mr. Gardner know the victims of this
20 robbery and murder?

21 A He gave me the impression that they did.

22 Q He gave you the impression that they did?

23 A Yeah.

24 Q And who do you mean by "they?"

25 MR. CROWE: Objection.

1 THE COURT: Overruled. You may answer.

2 A Bo, Wayne, and Goo.

3 Q Okay. Did this have an effect on the robbery that you were
4 planning for Goose?

5 A Yes.

6 Q What?

7 A Put off.

8 Q Why?

9 A Because it was Wayne thing.

10 Q It was Wayne's thing?

11 A Yeah.

12 Q If Wayne wasn't there, would it be more difficult to do the
13 robbery?

14 A More difficult? I wouldn't say.

15 Q Well, why would you, why would you put it off, then?

16 A Because I wouldn't want to mess it up.

17 Q You wouldn't want to mess it up. Were you expecting Wayne
18 to get out of jail fairly soon and --

19 MR. CROWE: Objection.

20 THE COURT: Overruled. You may answer.

21 A Yes.

22 Q Okay. Was Goo's attitude any different after, after this?

23 A He was hungry.

24 Q What do you mean by "he was hungry?"

25 A He wanted some money.

1 Q Why did he want money?

2 MR. CROWE: Objection.

3 THE COURT: Overruled.

4 A He was trying to pay for Wayne lawyer.

5 Q Okay. And yet you weren't going to do the robbery of Goose
6 any more, right?

7 A Right.

8 Q So did your plans change direction at that point?

9 A Change direction? I wouldn't say.

10 Q Well, did you focus on a different target than Goose?

11 A No.

12 Q Who did you focus on?

13 A I was always focused on Darius.

14 Q Okay. Darius was already a plan, is that correct?

15 A Right.

16 Q Okay. Once, once Wayne was arrested, who was involved in
17 your plan to rob and kill Darius?

18 MR. CROWE: Objection, Your Honor.

19 THE COURT: Overruled.

20 A Me, Goo, and E.

21 Q Okay. Did you, in the deal that you made with Momma whereby
22 you would target Darius instead of Momma, was there any
23 understanding between you and him about any payment that would be
24 made to you if you would kill Darius?

25 A Yes. He was going to pay me to kill Darius.

1 Q How much was he going to pay you?

2 A I don't remember.

3 Q Was it more than \$5,000 or less, or do you remember?

4 A I believe it was more.

5 Q More than Darius had offered, more than you had requested
6 from Darius to kill Momma, is that correct?

7 A Yes.

8 Q And you were also going to rob Darius, is that correct?

9 A Yes.

10 Q Was there any understanding that you would split the loot
11 with Momma?

12 A No.

13 Q Who was going to get the loot from the robbery?

14 A Me, E, and Goo.

15 Q In your discussion with Momma, was there any discussion
16 about Darius's wife, the one with whom Momma was having an
17 affair?

18 A Momma didn't want her hurt.

19 Q He didn't want her hurt?

20 A Right.

21 Q Okay. What was her name, do you know?

22 A Tonya Spence.

23 Q Okay. Now, you said that Momma was needed to be part of
24 this because he's the one who knew at least what building Darius
25 lived in, is that correct?

1 A Right.

2 Q And he lived there with his wife, Tonya, is that correct?

3 A Yes.

4 Q So what happened? How did, how did the knowledge that Momma
5 have get transferred to you about where they lived?

6 A Momma took us out there one day.

7 Q When you say "he took us out there", who are you referring
8 to?

9 A Me, Goo, and E.

10 Q All three of you?

11 A Yes.

12 Q What car did you go in?

13 A We was in Goo car.

14 Q What kind of car was Goo driving at that time?

15 A An Intrepid.

16 Q An Intrepid? Is that a kind of Dodge?

17 A Yes.

18 Q Do you know what color it was?

19 A Green.

20 Q Okay. So where were you living at that time, anyway?

21 A Where was I living?

22 Q Yeah.

23 A Main Avenue.

24 Q Where is that?

25 A Liberty Heights.

1 Q So did Goo come around and pick you up or what?

2 A Yes.

3 Q And then where did you go?

4 A Oh, we went to Goo, we went to go pick Momma up on Mosher
5 and Monroe.

6 Q Mosher and Monroe?

7 A Yeah.

8 Q So that's in West Baltimore still?

9 A Yes.

10 Q And what about E, did you pick him up?

11 A He was with Goo when they came to get me.

12 Q I see. So all four of you are in the car together?

13 A Right.

14 Q Where did Momma direct you to go?

15 A Out Randallstown.

16 Q Out to Randallstown. Do you know where in Randallstown?

17 A No.

18 Q Okay. About how long before you actually attempted to do
19 this robbery and murder of Darius Spence was it that Momma drove
20 you out there or went out with you and showed you where the
21 building was?

22 A Maybe a month and a half, two months.

23 Q A long time?

24 A Right.

25 Q So you said that Momma just knew where the building was, is

1 that correct?

2 A Right.

3 Q Didn't you need to know specifically what apartment within
4 the building it was that they lived in?

5 A Yes.

6 Q How did you go about learning what apartment it was?

7 A When we used to go out there and watch them, E and Goo used
8 to go in the little basement part. And when one of them come in
9 the building, they follow them up, see what house they go in.

10 Q How often did you go out there to watch the apartment?

11 A A lot.

12 Q Every day?

13 A No.

14 Q How many days a week?

15 A I say about four or five.

16 Q Okay. Four or five days a week you drove out there just to
17 watch the building, is that your testimony?

18 A Yeah.

19 Q And you said that Goo and E would get out and go into the
20 basement. What would you do?

21 A I would be sitting in the car waiting for one of them to
22 come home, and let them know on a walkie-talkie.

23 Q You had walkie-talkies?

24 A Yes.

25 Q Okay. Let me ask you what you took out there when you did

1 these trips to the, to the building. Was there anything else
2 that you took with you?

3 A We took walkie-talkies, rubber gloves, duct tape, and guns.

4 Q What guns?

5 A A Glock .40 and a .357.

6 Q I have two exhibits here that are marked S-42 and S-41. And
7 I'm going to first put on the projector S-41. Have you had a
8 chance to look --

9 THE COURT: I'm sorry. Remove the other exhibit,
10 please, Mr. Harding.

11 Q Your Honor, these guns are safe. They have plastic strips
12 through them.

13 THE COURT: So noted. Thank you.

14 Q Do you recognize this, S-41?

15 A Yes.

16 Q What is it?

17 A .357.

18 Q And that was one of the guns that you took out there with
19 you when you did these surveillances of Darius and Tonya's
20 apartment?

21 A Yes.

22 Q Who had the .357?

23 A Goo.

24 Q Okay. And what kind of gun is it? You can tell just by
25 looking at it, can't you? Is it a revolver?

1 A Yes.

2 Q Okay. Let me show you S-42. Do you recognize this?

3 A Yes.

4 Q Is that the other gun that you guys took out with you when
5 you went to visit, when you went to look at the apartment where
6 Tonya and Darius lived?

7 A Yes.

8 Q What kind of gun is it?

9 A A .40.

10 Q A .40 caliber?

11 A Yes.

12 Q Whose gun was this?

13 A They both was bought by Goo.

14 Q It was Goo's gun, also?

15 A Yes.

16 Q Okay. Now, you said that Wayne had been locked up at this
17 time, right?

18 A Yes.

19 Q Is this the .40 caliber that Wayne told you about that had
20 three bodies on it?

21 MR. CROWE: Objection.

22 THE COURT: Overruled. You may answer.

23 A I wouldn't know.

24 Q You don't know?

25 A No.

1 Q Okay. Who would have this gun when you went out there?

2 A E.

3 Q E carried that gun?

4 A Yes.

5 Q Where would E carry the gun, anyway?

6 A In his dip.

7 Q And where would Goo carry his gun?

8 A In his dip.

9 Q Okay. Your Honor, is this a good time to break?

10 THE COURT: It is indeed, yes. Members of the jury,
11 we'll break for the day at this time. Please leave your note
12 pads on your chairs, have no discussion about any of the evidence
13 or about the case. Conduct no investigation of any sort. Do not
14 go online, do not look up any words, do not visit any of the
15 locations that have been mentioned in the evidence.

16 We will start tomorrow morning at 9:30 and we will
17 conclude a little early tomorrow, probably no later than 3:00,
18 maybe 3:15. And of course, we will not be in session on Thursday
19 or Friday of this week. We're still making good time despite the
20 delays that have been necessary and for which I again apologize.

21 Have a pleasant evening. The jury is excused until
22 9:30 tomorrow morning.

23 (Jury exits the courtroom.)

24 (Witness exit the courtroom.)

25 THE COURT: I would imagine, Mr. Harding, we'd be

1 actually rather lucky if we finish Mr. Montgomery tomorrow.

2 MR. HARDING: I will certainly be done with my direct
3 in the morning, Your Honor. And perhaps defense counsel will
4 abbreviate their cross examinations. Just kidding, Your Honor.

5 THE COURT: Perhaps not. Yes. I mean, judging from
6 Mr. -- how quickly I forget -- Dobropolski, Dobropolski, I think
7 it's probably going to be all day with Mr. Montgomery. But you
8 will have a witness standing by? No? In the event we --

9 MR. HARDING: Actually, Your Honor, we have two fairly
10 quick eyewitnesses that we were going to put on the stand first
11 thing in the morning because we had made, again, elaborate plans
12 to accommodate.

13 THE COURT: Andrea?

14 MR. HARDING: Yes.

15 THE COURT: And the lady driving the car?

16 MR. HARDING: Yes. We were going to interrupt Mr.
17 Montgomery's testimony, put them on first thing in the morning,
18 and then continue with Mr. Montgomery.

19 THE COURT: Let me see if you find it acceptable to
20 complete your direct -- how much more of the direct do you think
21 you have? I'm not going to hold you to anything.

22 MR. HARDING: I think less than an hour, Your Honor.

23 THE COURT: Less than an hour. Okay. And what are you
24 going to play? Oh, the Stop Snitching. How many minutes of that
25 are you going to show?

1 MR. HARDING: Just a couple minutes. Just a segment.
2 Not the whole video. That would be too much.

3 THE COURT: Well, others may want to play it.

4 So could you finish your direct, then bring those two
5 witnesses in, then we take a break? And then we start with Mr.
6 Coburn. And that sounds like, that way it will be a nice, it
7 will be a reasonable break. We can get him out of here by 11:00
8 or something.

9 MR. HARDING: Okay. Thank you very much, Your Honor.

10 THE COURT: All right. Mr. Coburn.

11 MR. COBURN: And I know Your Honor knows that I'm,
12 particularly in terms of scheduling issues, I mean, I'm
13 definitely disposed to, you know, to be flexible and courteous.
14 But this witness is the key witness for us. I mean, just by
15 several orders of magnitude, he's the most important witness in
16 this case for Mr. Gardner.

17 I do just, you know, and I do it reluctantly, but I'm
18 really worried about the idea of his direct getting wrapped up.
19 And then a young, a woman who was a young woman at the time, you
20 know, out there in front of this house, you know, observes the
21 shooting, she testifies before Montgomery ever gets crossed. I
22 just need to note an objection to it, Your Honor. I don't think
23 it's asking that much of the government, given the critical
24 nature of this particular piece of testimony, that we wrap up
25 this witness before they call Ms. Smith or Kelly David.

1 These people are both local, it's my understanding. I
2 don't personally understand, nor have I heard a proffer as to
3 why, you know, I mean, if they're being flown in from Amsterdam
4 or something, that's one thing. But they're right around the
5 block. And I don't understand why we can't just wrap up Mr.
6 Montgomery so it's fresh in the jury's mind, and move through it
7 that way.

8 THE COURT: I don't see any prejudice to Mr. Gardner
9 from having them testify. There's not going to an in-court
10 identification.

11 MR. KURLAND: Your Honor --

12 THE COURT: Is there?

13 MR. KURLAND: Well, Ms. David and Ms. Smith are going
14 to be my witnesses. In light of the Court's earlier ruling,
15 there's a very good chance that the type of cross examination I
16 do with respect to those witnesses is far different. And given
17 the manner in which we have legitimate strategic concerns, it is
18 manifestly unfair and prejudicial to Mr. Gardner if we can't get
19 Mr. Montgomery's testimony in cross examination in first before
20 those witnesses testify.

21 THE COURT: How can it possibly be prejudicial?

22 MR. KURLAND: Your Honor, I am reluctant to have to
23 preview a critical cross examination of some witnesses,
24 particularly in light, and Mr. Coburn and I haven't had an
25 opportunity to talk about this, but I cannot agree more with Mr.

1 Coburn's, I think, very common and very measured request. This
2 is not a witness that should have his direct and cross broken up,
3 particularly in light of some witnesses who might not be very
4 brief. In addition --

5 THE COURT: How can they not be very brief? We spent
6 hours with you arguing that we ought to tell the jury that Mr.
7 Gardner's been convicted in state court --

8 MR. KURLAND: Your Honor, that's not going to happen
9 now.

10 THE COURT: -- on the basis of these very witnesses.
11 And now all of a sudden they can't testify after Mr. Montgomery
12 or before Mr. Montgomery's cross? You're going to have to tell
13 me something.

14 MR. KURLAND: Your Honor --

15 THE COURT: My imagination doesn't go that far. It's
16 not going to be an in-court identification. We went through, we
17 went through the motions hearing.

18 MR. KURLAND: That was for a very limited purpose, Your
19 Honor.

20 THE COURT: It was not for a limited purpose.

21 MR. COBURN: My concern about this, Your Honor, is not
22 so much what's being discussed right now. My concern is that the
23 jury's evaluation of this witness' credibility is going to turn
24 on some pretty fine details. And if his direct isn't fresh in
25 their minds at the time of the cross --

1 THE COURT: His direct won't be fresh in their mind.
2 There's an overnight recess. Mr. Harding says maybe another
3 hour.

4 MR. COBURN: But I think Mr. Kurland's right that, you
5 know, I mean, Smith and David, even at the motions hearing, you
6 know, their testimony took a pretty significant amount of time.

7 THE COURT: Wasn't any fault of mine.

8 MR. COBURN: No. No. Of course I'm not suggesting
9 that.

10 THE COURT: How long, look -- I think I've been very
11 accommodating. Others may disagree. But I think I've been very
12 accommodating.

13 What on earth could make the difference as to whether
14 these two witnesses testify before Mr. Montgomery's cross, before
15 Mr. Harding's completion of the direct? Are you saying you don't
16 want him at all? Is that what you're saying?

17 MR. COBURN: No.

18 THE COURT: What are you saying, Mr. Coburn? If we're
19 going to have them tomorrow, you would rather have them to start
20 the day?

21 MR. COBURN: I would rather do it in the usual order
22 and have them after. Can I just ask Your Honor one question,
23 very briefly? Because I do think Your Honor's been extremely
24 accommodating during the course of this entire trial.

25 THE COURT: Just tell me what the problem is.

1 MR. COBURN: Actually, could I put that question back
2 to Mr. Harding?

3 THE COURT: No. Tell me what the problem is. I mean,
4 look, there are no secrets here.

5 MR. COBURN: I'm sure there aren't.

6 THE COURT: So what's the big deal? I don't get it.

7 MR. COBURN: I don't think the cross is going to mean
8 as much if it's split up in that way. That's all it is, Your
9 Honor.

10 THE COURT: Why?

11 MR. COBURN: Because the jury's going, there's going to
12 be this, you know, pretty significant intervening -- I'm less
13 worried about Ms. David. But Andrea Smith, at the time of this
14 murder, Your Honor, is, she's a young girl. I think she's 12 or
15 something like that.

16 THE COURT: Right.

17 MR. COBURN: She's out there playing on the grass.

18 THE COURT: Right.

19 MR. COBURN: When these two guys, you, she's going to
20 testify about, came up to a woman who had just fallen off a
21 balcony and put two bullets in her.

22 THE COURT: Right. Right. Are you talking about the
23 emotional impact that that's going to have on the jury?

24 MR. COBURN: Yes.

25 THE COURT: It's a murder trial.

1 MR. COBURN: It is. But that particular piece of
2 testimony, it's just my view, Your Honor, I'm just telling Your
3 Honor what I think.

4 THE COURT: You think I should make a ruling so that,
5 so that the emotional impact of a murder is lessened on the jury?

6 MR. COBURN: No, it isn't that.

7 THE COURT: You think Mr. Gardner's entitled to --

8 MR. COBURN: It isn't that.

9 THE COURT: Well, what are you saying?

10 MR. COBURN: I'm saying that I haven't heard any reason
11 why this should happen.

12 THE COURT: Because we want to get the witnesses in and
13 out as quickly as we can. We want to accommodate the witnesses.

14 MR. COBURN: Why can't that be done right after Mr.
15 Montgomery testifies?

16 THE COURT: Because we may not finish with Mr.
17 Montgomery tomorrow. How long are you going to be?

18 MR. COBURN: A while.

19 THE COURT: A while. You're probably going to be four
20 hours.

21 MR. COBURN: I doubt that. But it will be a
22 significant cross.

23 THE COURT: Well, Mr. Crowe's going to have an awful
24 lot. Mr. Crowe's given me, you know, seven prior statements by
25 Mr. Montgomery. Mr. Lawlor's going to be forever. We know that.

1 MR. COBURN: I've said my piece on it, Your Honor.

2 MR. KURLAND: Judge, I'll be very brief.

3 MR. LAWLOR: How did I get into it?

4 MR. KURLAND: Your Honor, Your Honor, cross examination
5 is supposed to be the greatest engine ever designed to serve the
6 truth. Mr. Gardner has a right -- this is the critical witness
7 against Mr. Gardner for several of the counts. We have a right.
8 This is not some procedural witness, whether it's a lab tech
9 coming in to put up a Mercedes Benz sign and tell us about cell
10 towers.

11 This is a critical witness and we are entitled to the
12 normal progression of direct examination, even with a break and
13 cross examination.

14 THE COURT: Okay. You're not going to get it. Here's
15 your choice. Here's your choice. Do you want Smith and Davis at
16 9:30 or do you want them after Mr. Harding submits the witness?
17 I'm looking at Mr. Kurland because Mr. Kurland's got those two
18 witnesses. How do you want it, Mr. Kurland?

19 MR. KURLAND: Can I have ten seconds to confer with
20 co-counsel?

21 THE COURT: Of course. Of course.

22 (Pause in Proceedings.)

23 MR. KURLAND: Okay. We'd rather have those witnesses
24 first, Your Honor.

25 THE COURT: That's fine.

1 MR. KURLAND: Okay. Your Honor, just, the cross
2 examination is different, is going to be different based on the
3 Court's ruling. That's something.

4 In addition to that, I just want to make a scheduling
5 thing. Yom Kippur is tomorrow and the Court said 3, 3:15. As a
6 personal thing, if the Court says no, I understand that.

7 THE COURT: No. Of course I'm not going to say no.
8 What time?

9 MR. KURLAND: Well, three at the very latest.

10 THE COURT: It won't be after three. And my interest
11 is getting those three witnesses finished tomorrow. And you
12 know, obviously, you take as much time as you need. But I'm not
13 going to take the chance that the witnesses come in tomorrow
14 morning and they sit here all day and then at, you know, 2:45,
15 Mr. Harding stands up for redirect examination of Mr. Montgomery
16 and then I have to tell those two young women, I'm sorry, you got
17 to come back next week.

18 MR. KURLAND: They should come back.

19 THE COURT: That young lady has been living with this
20 thing, you know. She's already been through the grinder at the
21 state court trial.

22 MR. KURLAND: She did not testify at the state court
23 trial, Judge.

24 THE COURT: Well, but she was subpoenaed. She was
25 subpoenaed.

1 MR. KURLAND: She was not. She was not.

2 THE COURT: She was subpoenaed. Surely she was
3 subpoenaed.

4 MR. KURLAND: She was not, Your Honor. That's just a
5 factual record. She was not.

6 THE COURT: All right. Well, she's been through the
7 grinder in the motions hearing. So I want to get her in and out
8 so she can be done with this.

9 MR. KURLAND: It would be our suggestion that they come
10 back on Tuesday because the manner in which they get examined --
11 I just want, for the record, you're putting us in an unfair -- I
12 should take that back. You're putting us in a difficult position
13 where I have to cross two important witnesses. And we have to
14 make a choice between whether or not we want a direct finished of
15 a witness as opposed to breaking up the direct for a lot of other
16 strategic concerns. I just wanted to put that on the record.

17 THE COURT: If you could tell me how you're prejudiced,
18 I could possibly change my mind.

19 MR. KURLAND: Okay. I'll just put it this way. Your
20 Honor, the state court trial --

21 THE COURT: I understand all the business about the
22 T-shirt and who was wearing a hat and who had the revolver and
23 who had the automatic. I don't see how any of that is of
24 terrible importance here.

25 MR. KURLAND: Your Honor, the state court trial took

1 two weeks. The government is going to put on this murder thing
2 probably in a day and a half. All right? So the truncated
3 version requires, it's the focus and the manner in which the case
4 is going to be tried is one thing.

5 Montgomery, and I'll just, I don't want to repeat
6 myself or repeat anything Mr. Coburn said. But the strategic
7 disadvantage is this. Basically, as far as I can tell, other
8 than the police officers who are going to come in and do some
9 technical stuff and some evidence recovery and perhaps go through
10 how the show-up was administered, the murder case here are these
11 three witnesses, largely. All right? There was a two week trial
12 in state court. There was a lot of other eyewitnesses the
13 government called in the state case we're going to have to try to
14 subpoena as part of the defense case.

15 That goes back, then, to Mr. Coburn's point, that there
16 is something uniquely singular about the manner and method of
17 getting in the full effect, both on direct and cross, of Mr.
18 Montgomery. And to force the defense to make these other type of
19 sort of administrative choices, whatever, we'll do it and we'll
20 live with the choice that we made. But it's an unfair choice
21 given that these are local witnesses who could come in on Tuesday
22 and Mr. Harding can tell them to just come back on Tuesday.
23 Thank you, Your Honor.

24 THE COURT: All right. It appears, Mr. Harding, that
25 we should have the two citizen witnesses first thing. And

1 depending on how long they go, we will probably take a recess and
2 then bring Mr. Montgomery back.

3 MR. HARDING: That's fine, Your Honor.

4 THE COURT: All right. Mr. Crowe.

5 MR. CROWE: Your Honor, if the Court has already ruled
6 on that, I won't speak except to say that we would, we believe
7 that Mr. Coburn is right. If you'd like me to say why in a
8 sentence, I will.

9 THE COURT: Sure. Say why.

10 MR. CROWE: The cross examination of Mr. Montgomery is
11 going to be technical. It is intended to show that, essentially,
12 that the Tonya Jones Spence thing was not part of the enterprise.
13 That, essentially, that these people were more dissociated than
14 the government says.

15 After the jury hears those two people testify, I don't
16 think they're going to want to hear that sort of technical cross
17 examination and I don't think they're going to pay as much
18 attention.

19 THE COURT: All right. I think you're wrong. You're
20 shorting the jury.

21 MS. RHODES: Your Honor, if I could be heard as well on
22 this. I think that there is a, my concern is that we're not
23 going to be able to cross examine Mr. Montgomery until next week,
24 possibly not even until Tuesday. And I don't think it's fair for
25 Mr. Mitchell, for us to have to wait while the jury mulls over --

1 THE COURT: You get to go first. You gave up -- I'm
2 sorry. I'm sorry. I don't know why I'm raising my voice. Ms.
3 Rhodes, you have the first position. If that's your concern, Mr.
4 Coburn and Mr. Kurland will understand the decision that you and
5 Mr. Lawlor are free to make now, in view of the Court's ruling,
6 to take back your first position.

7 See, I went over this. I went over this up front on
8 the record. I made it clear we were going to stay in this order.
9 And I'm not faulting you and Mr. Lawlor and I appreciate the good
10 relationship among counsel. But, you know, there's certain
11 assumptions that I simply don't share. I don't share that this
12 case on Mr. Gardner rises and falls with Mr. Montgomery. I
13 respect Mr. Kurland and Mr. Coburn's point of view in that
14 regard. But as I said earlier today, all of the evidence, with
15 the exceptions that I've noted, is admissible against all of
16 these defendants.

17 So go ahead and finish your point. But that's the
18 answer. If you don't get to cross examine Mr. Montgomery until
19 Tuesday, it will be, one, because you gave up your position in
20 first, and two, because Mr. Kurland's cross examination of these
21 two women takes too long. And I say that with all respect to Mr.
22 Kurland.

23 MR. KURLAND: Thanks.

24 THE COURT: There's no reason we shouldn't finish Mr.
25 Montgomery tomorrow.

1 MS. RHODES: I have two points I want to make. One is
2 that, first of all, what I'm saying is not, does not only apply
3 to Mr. Mitchell. Yes, I could say to Mr. Coburn right now, yeah,
4 we're taking back our first place and then somebody else gets the
5 shaft. I mean, I don't think that really solves the whole
6 problem we have here.

7 But significantly, we've already interrupted Detective
8 Niedermeier's testimony and Mr. Denham's testimony because Mr.
9 Dobropolski and Mr. Montgomery had significant problems in
10 getting them here, the Witness Protection Program and the state
11 custody, and all these things the government had gone through.

12 THE COURT: That's simply not true. No. I'm sorry.
13 No, it's not true. The government was very clear. The
14 government was very clear.

15 MS. RHODES: That's exactly what we heard about.

16 THE COURT: The record is very clear that the
17 government agreed to start a day with those two witnesses. And I
18 gave counsel yesterday more than an hour to argue about
19 Dobropolski's testimony. And now you're trying to suggest that
20 the Court hurt you, I'm referring generally to the defense, by
21 giving you all that time.

22 Now, the government asked that the Court not require it
23 to produce certain witnesses for pretrial hearings. The Court
24 was convinced, with very good reason as far as I'm concerned, not
25 to require the government to bring its witnesses in pretrial. As

1 an accommodation to everybody, I said, Okay, we're going to have
2 suppression hearings and voir dire of witnesses in the midst of
3 trial. Everybody knew what we were doing. Everybody knew that
4 that would screw up the trial schedule.

5 I said to the government weeks ago at the pretrial
6 conference, You know, let's try to start each day with a witness
7 in custody because in my mind that made sense. It made for good
8 trial management.

9 Now, Mr. Lawlor -- and I'm not picking on anybody --
10 but you heard Mr. Lawlor's cross examination. How many times did
11 he go over the same areas three and four times? The transcript
12 will reflect it. The sarcasm, the loosey-goosey. So much so
13 that I actually had to say something to him about it this
14 afternoon. Now that's his style, that's fine. I don't try
15 anybody's case.

16 Mr. Martin wanted to play a tape that had nothing on
17 it. Now, it was only a couple of minutes and he had a good
18 reason for doing that.

19 MS. RHODES: Your Honor, I think --

20 THE COURT: But my point is, you all try the case the
21 way you want. My job is to manage the case. You had first
22 position. We weren't going to finish with Montgomery in one day,
23 anyway. If the government had brought him in tomorrow, there's
24 no way we were going to finish it. The government intended to
25 brings him in this morning. We should have finished Dobropolski

1 yesterday, in my judgment. All right? So those are the facts in
2 the record.

3 So now all of a sudden it's a problem to break up a
4 witness' testimony. All of a sudden. Hasn't been a problem with
5 anybody else. It's never been a problem in any trial that I
6 presided over.

7 Now, all of a sudden, all of a sudden we can't have
8 these two women who saw what they saw, who don't want to be here.
9 We want to make them come back next week because they're local
10 witnesses.

11 MS. RHODES: Your Honor, I fail to see why a phone call
12 from the government today at 5:30 to them can't tell them, Come
13 back next Monday.

14 THE COURT: Well, we could have them come back three
15 Mondays from now.

16 Now, Mr. Pyne, what is this issue you wrote to me about
17 this morning where some objection wasn't made and now you need to
18 make a record?

19 MR. PYNE: Your Honor, that was in regards to the
20 statement, it was Sergeant Wooden testified to a statement that
21 he had taken after the 95 stop. He took statements from Mr.
22 Martin and he took statements from Mr. Gardner.

23 Mr. Gardner's statement included references to Mr.
24 Martin that we objected to. I meant at the end --

25 THE COURT: What was the reference?

1 MR. PYNE: The statement was mainly in regards to Mr.
2 Gardner, that Mr. Gardner had a source name Poppi up in New York
3 that he met and that he was dealing drugs. But at the end of the
4 statement was two references, I believe, to Mr. Martin. That Mr.
5 Martin and he met this source, Poppi, and that Mr. Martin was
6 present during the exchange of cocaine.

7 I objected to those because there's obvious Bruton
8 problems with those. The Court overruled my objection, gave a
9 limiting instruction. But I wanted to make my record that we
10 feel that the instruction was not sufficient; that the jury
11 should be, that those remarks that include Mr. Martin should, in
12 fact, be stricken from the record, and the jury should be
13 instructed to disregard those remarks.

14 THE COURT: Wait a minute. I'm confused. You say I
15 gave a limiting instruction?

16 MR. PYNE: You gave an instruction along the lines of,
17 after my objection, that the jury would receive later instruction
18 as to how they can use these statements against particular
19 defendants.

20 THE COURT: You're saying I didn't say don't
21 consider --

22 MR. PYNE: No, you didn't say, Don't consider this
23 evidence against Mr. Martin. There was a much more general,
24 You'll receive instructions in regards to these statements later.

25 THE COURT: So Martin didn't make a statement?

1 MR. PYNE: Martin made a statement. According to the
2 trooper's testimony, Martin's statement was only that he had been
3 with Mr. Gardner all that day. But Mr. Gardner's statement
4 specifically made two references that would indicate Mr. Martin
5 had knowledge of the drugs in the car.

6 THE COURT: All right. And so do you want to submit a
7 proposed instruction?

8 MR. PYNE: I would be happy to.

9 THE COURT: I'll be happy to consider it and probably
10 give it.

11 MR. PYNE: All right.

12 THE COURT: Just so I'm clear. You're objecting to --
13 in other words, I think what you're saying is that the
14 trooper's -- wait minute. Didn't we go over this at the motions
15 hearing?

16 MR. PYNE: We did litigate it to some extent at the
17 motions hearing. I went over the transcript and, quite frankly,
18 I could not find where the Court specifically ruled on the
19 statement. But we did, Trooper Wooden testified. We did
20 litigate the admissibility of the statement. You found it
21 admissible. I could not find --

22 THE COURT: Wait a minute. You're saying I found a
23 statement by Gardner to the trooper incriminating Mr. Martin to
24 be admissible against Mr. Martin over an objection?

25 MR. PYNE: I don't believe you did, Your Honor.

1 THE COURT: I don't think I did, either. So my
2 question is, when was this brought to my attention?

3 MR. PYNE: The ruling was less than clear.

4 THE COURT: I take responsibility for that. The ruling
5 on what? I don't remember an argument about whether a statement
6 to a law enforcement officer by Mr. Gardner was admissible
7 against any other defendant.

8 MR. PYNE: I don't think --

9 THE COURT: I don't even remember, I'm not even sure
10 that Mr. Kurland and Mr. Coburn challenged the admissibility of
11 that statement as to Mr. Gardner. Do you remember?

12 MR. PYNE: They did.

13 THE COURT: They did?

14 MR. COBURN: I don't remember, Your Honor.

15 THE COURT: I mean, other than on the Fourth Amendment
16 issues. But I mean apart from, apart from the automobile stop.
17 Is it your recollection that --

18 MR. PYNE: When I went through the transcript, Your
19 Honor, the witness after that, I believe, was Detective
20 Niedermeier.

21 THE COURT: Okay. But the Miranda was pristine. And
22 my recollection is that they made no Miranda challenge to Mr.
23 Gardner's statement. So I would not have been called upon on the
24 basis of any motion by Mr. Gardner to consider the admissibility
25 of that statement.

1 MR. PYNE: I believe that was the only thing that Your
2 Honor addressed, was the Miranda.

3 THE COURT: Whether Mr. Miranda was properly
4 Mirandized -- whether Mr. Gardner was properly Mirandized?

5 MR. PYNE: I think that was the only issue. Because
6 there were, in the testimony there was issues as to the times
7 that the Miranda was given, where it was given, because there was
8 a question as to whether it was given out on the highway or
9 whether it was given back at the station, whether it was the
10 Trooper Bond that gave it or whether it was Sergeant Wooden.
11 Because sergeant Wooden actually testified that he never
12 Mirandized either one of the defendants.

13 THE COURT: Right.

14 MR. PYNE: But it had been previously given by Trooper
15 Bond.

16 THE COURT: Right. Okay. Well --

17 MR. PYNE: Quite frankly, what happened, Your Honor, as
18 I was saying, I believe Sergeant Niedermeier testified shortly
19 thereafter, I think it was Niedermeier, and we got into the whole
20 issue of Mr. Mitchell in Central Booking being transported over.
21 And that subsumed your ruling in regards to the statement. I
22 could not find any real clear ruling on this whole Bruton issue
23 with that statement.

24 THE COURT: Well, my recollection, which is not as good
25 as any of yours, I'm sure, my recollection is that the whole

1 focus of that traffic stop had to do with Fourth Amendment issues
2 and whether the trooper could actually see that a seat belt was
3 not being used in a vehicle traveling 60 miles per hour
4 perpendicular to the trooper sitting on the highway. That's what
5 I remember about that.

6 And I don't remember there being a serious Miranda
7 issue, not to say there wasn't, but I don't remember that at all.

8 But in any event, obviously, you wouldn't have moved to
9 suppress Gardner's statement.

10 MR. PYNE: And I, quite frankly, I didn't realize the
11 Bruton issue until --

12 THE COURT: I'm sorry?

13 MR. PYNE: Until it came up that. I'm not sure if
14 Trooper Wooden even testified about the actual statement in
15 itself at the motions hearing.

16 THE COURT: That's exactly my point. So did you know
17 he was going to say that? In other words, was it, was it a
18 timely objection or did he say it and then you objected because
19 you didn't know he was going to say what --

20 MR. PYNE: I'm not sure it came out on direct. But I
21 knew he was going to say it when Mr. Coburn crossed him because
22 he had the actual statement, I believe, on the DOAR, and was
23 going through it. And then as soon as he said Martin's name, I
24 objected.

25 MR. COBURN: That I do remember.

1 THE COURT: So you -- I don't mean this to sound the
2 way it's going to sound -- but you permitted Mr. Coburn to put
3 the statement, was it a statement or was it the trooper's report?

4 MR. PYNE: The trooper's report.

5 THE COURT: So you allowed Mr. Coburn to put the
6 trooper's report on the document camera and show that to the
7 jury. And it said -- was that in the --

8 MR. PYNE: I believe I objected, Your Honor.

9 THE COURT: You objected when?

10 MR. PYNE: When he put the statement up there. I'm not
11 sure that Your Honor appreciated why I was objecting. Because I
12 think it was the second time that he said, referred to Mr. Martin
13 that I objected. Then Your Honor did give, again, some type of
14 limiting instruction, but it was not nearly, don't hold this
15 against Mr. Martin.

16 THE COURT: All right. If you want to submit a
17 proposed instruction, I'll be happy to give it. Obviously, I
18 haven't heard from the government.

19 When you say "strike it", obviously, I'm not going to
20 strike any testimony. The testimony clearly was admissible
21 against Mr. Gardner. And so what you want, I think, if I'm
22 understanding your argument, is a fuller limiting instruction
23 that tells the jury that the jury may not consider what Mr.
24 Gardner said to law enforcement about Mr. Mitchell -- excuse
25 me -- about Mr. Martin during that interview of Mr. Gardner at

1 the JFK barracks after the two of them were detained. Do I have
2 that right?

3 MR. PYNE: I'm not sure that that's sufficient, Your
4 Honor, because --

5 THE COURT: What do you mean, it's not sufficient?
6 What else can I do? I can't strike the testimony because it's
7 admissible, clearly, against Mr. Gardner. I can't strike the
8 testimony.

9 MR. PYNE: You can instruct them, and this is, I guess,
10 what you're asking me to propose, Your Honor, not to hold any
11 statements made by Mr. Gardner against Mr. Martin. Should not be
12 held as evidence against, considered as evidence against Mr.
13 Martin.

14 THE COURT: Well, wait a minute. I don't know if that
15 would be accurate. I thought you were just talking about the
16 mention of Mr. Martin.

17 MR. PYNE: No, because the statements definitely
18 implicate Mr. Martin in the knowledge of 50 grams of cocaine that
19 are found in the car.

20 THE COURT: Well, wait a minute. Wait a minute. The
21 coke was found in the car being driven by Mr. Martin.

22 MR. PYNE: Secreted.

23 THE COURT: Which was Mr. Gardner's car. Correct?

24 MR. PYNE: Yes.

25 THE COURT: Mr. Gardner's statement explained to the

1 trooper that they had gone up to get the cocaine because they'd
2 been shorted.

3 MR. PYNE: Mr. Gardner's statement.

4 THE COURT: Right. And Mr. Martin is driving the car
5 containing that cocaine.

6 MR. PYNE: Yes.

7 THE COURT: And so you want me to instruct the jury, in
8 effect, that there's no proper evidence before them to show that
9 Mr. Martin knew that there was cocaine in that car?

10 MR. PYNE: I'm asking you to instruct them that the
11 statement of Mr. Gardner can only be taken as evidence in regards
12 to Mr. Gardner and should not be considered in any way against
13 Mr. Martin in terms of the references made to Mr. Martin within
14 that statement. I think we would be entitled to have it
15 redacted.

16 THE COURT: You're saying two different things. It has
17 nothing to do -- if I'm following you, Mr. Pyne, it has nothing
18 to do with Mr. Gardner mentioning Mr. Martin's name.

19 MR. PYNE: I think it has everything to do with that,
20 Your Honor, because we'd be entitled to have that redacted.

21 THE COURT: Imagine that that part of it is redacted.

22 MR. PYNE: Then we would have no objection to it or we
23 couldn't, we could not have an objection to it. Because I think
24 we would be entitled to have Mr. Martin's name redacted from that
25 statement. I think we should have been entitled to have it

1 redacted.

2 THE COURT: All right. Submit what you want. I didn't
3 think it was a statement in the, in the sort of Rule 16 sense.
4 It was an interview, wasn't it? It wasn't recorded.

5 MR. PYNE: It was an oral statement.

6 THE COURT: It was an oral statement after an
7 interview.

8 MR. PYNE: Post Miranda.

9 THE COURT: During an interview. And the trooper wrote
10 it up, right?

11 MR. PYNE: Yes.

12 THE COURT: And the government didn't use it. Was this
13 the infamous Paragraph Six?

14 MR. COBURN: Yes.

15 THE COURT: This is the infamous Paragraph Six?

16 MR. COBURN: Yes, it is, Your Honor.

17 MR. PYNE: I have never referred to it that way.

18 MR. COBURN: From a DEA-6, Paragraph Six.

19 THE COURT: Okay. So Mr. Harding questioned the
20 witness without putting the report on the ELMO. Mr. Coburn gets
21 up in cross examination and says, Mr. Harding didn't have you
22 tell us everything that's in Paragraph Six.

23 MR. PYNE: That's exactly what happened.

24 THE COURT: And so did the trooper put Martin -- what
25 did he say about Martin during Mr. Coburn's examination?

1 MR. PYNE: He basically read in the paragraph that, the
2 things that implicated Mr. Martin were that Mr. Martin went up
3 with Mr. Gardner to meet this Poppi, was present during the
4 exchange, and saw or at least indicated that Mr. Martin saw the
5 cocaine being put into the car.

6 THE COURT: So you're telling the Court that you
7 objected during Mr. Coburn's cross examination of the trooper?

8 MR. PYNE: Yes. Because had we been tried separately,
9 that never would have come in against Mr. Martin.

10 THE COURT: Well, I'm not so sure. But probably not.
11 So you want to submit a proposed limiting instruction? I'll be
12 glad to consider anything you want to submit.

13 MR. PYNE: Thank you, Your Honor.

14 THE COURT: All right. Yes, Mr. Coburn.

15 MR. COBURN: Just on a separate issue. Just two
16 seconds, Your Honor. There was a display in connection with the
17 McCaffity/Jones, rather, I'm sorry, the McCaffity/Brown homicides
18 of scene photos, and I think there was a autopsy photo. And
19 there was some colloquy about the government making sure that we
20 knew that any photos like that were going to be used before they
21 were used. So I just wanted to mention that again. Because I
22 don't know if they're planning to, you know, show scene photos
23 with respect to Tonya Spence. If so, I just would want an
24 opportunity to object to them.

25 THE COURT: They'll show them to you before they

1 display them.

2 MR. COBURN: I appreciate that, Your Honor.

3 THE COURT: Thank you counsel. 9:30 tomorrow. We're
4 in recess.

5 (Conclusion of Proceedings at 5:40 p.m.)
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10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PAGE

WITNESS: CHRIS DOBROPOLSKI

CROSS EXAMINATION BY MR. MARTIN 6

CROSS EXAMINATION BY MR. LAWLOR 33

CROSS EXAMINATION BY MR. KURLAND 73

REDIRECT EXAMINATION BY MR. HARDING 76

RE CROSS EXAMINATION BY MR. MARTIN 100

RE CROSS EXAMINATION BY MR. LAWLOR 108

WITNESS: WILLIAM MONTGOMERY

DIRECT EXAMINATION BY MR. HARDING (ON MOTION) 121

CROSS EXAMINATION BY MR. LAWLOR 136

CROSS EXAMINATION BY MR. CROWE 138

CROSS EXAMINATION BY MR. COBURN 146

DIRECT EXAMINATION BY MR. HARDING 151

REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, et al., AMD-04-029, on October 7, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this ____ day of _____, 2009.

Mary M. Zajac,
Official Court Reporter

\$	17 [2] - 81:12, 169:23 170 [2] - 37:1, 40:11 17th [3] - 119:4, 133:9, 154:10 18 [1] - 45:2 1990's [1] - 169:5 1994 [1] - 122:15 1996 [3] - 96:5, 104:4, 104:21 1997 [1] - 45:6 1999 [1] - 191:25 19th [4] - 32:24, 32:25, 98:14, 98:18 1:00 [1] - 85:8 1st [1] - 89:11	16:17 28 [1] - 152:2 2:00 [2] - 111:15, 112:9 2:45 [1] - 236:14 2nd [1] - 97:17	7	242:1 Accord [3] - 174:2, 174:3, 175:6 according [9] - 39:1, 52:1, 52:21, 52:23, 96:3, 127:21, 216:8, 216:20, 217:16 According [1] - 245:1 account [4] - 80:9, 81:6, 98:22 accrued [1] - 49:13 accurate [3] - 100:3, 250:15, 256:8 acquitted [1] - 4:11 act [3] - 44:1, 44:6, 66:23 acting [1] - 68:3 activated [2] - 25:6, 112:2 activist [1] - 67:11 activities [17] - 56:11, 59:1, 65:24, 74:7, 79:14, 88:17, 89:2, 96:17, 96:22, 113:5, 113:6, 113:18, 129:23, 145:19, 156:10, 157:1 activity [6] - 58:21, 68:10, 94:14, 108:20, 124:19, 124:21 actual [5] - 86:22, 102:22, 118:16, 248:14, 248:22 Adam [1] - 1:22 added [1] - 26:14 addict [1] - 64:8 addiction [1] - 63:1 addictions [1] - 64:12 addition [6] - 83:12, 150:21, 206:24, 207:2, 231:4, 236:4 additional [2] - 117:23, 118:1 address [3] - 13:6, 63:3, 118:14 addressed [1] - 247:2 administered [1] - 238:10 administrative [1] - 238:19 admissibility [7] - 2:11, 112:14, 113:25, 116:22, 245:20, 246:10, 246:24 admissible [9] - 114:1, 114:2, 149:7, 240:15, 245:21, 245:24, 246:6, 249:20, 250:7 admission [1] - 18:24 admissions [3] - 21:4, 21:23, 113:9 admit [1] - 18:18
'	'01 [4] - 193:23, 193:24, 194:13 '02 [5] - 47:20, 89:24, 152:17, 194:13, 194:14 '03 [7] - 77:24, 80:4, 80:19, 81:4, 81:7, 117:11 '04 [2] - 109:9, 109:19 '93 [1] - 196:18 '96 [1] - 104:5 '97 [3] - 123:1, 172:10, 177:2 'Wayne' [1] - 216:15	3 3 [1] - 236:5 30 [8] - 35:5, 38:18, 38:22, 38:24, 50:2, 53:12, 53:14, 150:24 300 [1] - 109:17 33 [1] - 255:6 357 [3] - 225:5, 225:17, 225:22 37 [1] - 36:22 380 [2] - 170:10, 170:14 3:00 [1] - 227:17 3:15 [2] - 227:18, 236:5 3rd [1] - 30:4	8 800 [1] - 168:4 801 [1] - 120:16 801(d)(2)(e) [1] - 150:15 850 [1] - 168:4 8th [4] - 15:14, 21:24, 24:6, 25:14	
1	2 2 [1] - 111:5 20 [9] - 38:16, 43:5, 43:9, 45:16, 46:3, 53:14, 69:4, 142:17, 160:14 2000 [7] - 116:12, 137:23, 172:12, 172:13, 177:3, 193:16, 193:17 2001 [2] - 63:5, 137:21 2002 [34] - 42:11, 44:22, 45:4, 45:6, 46:23, 56:3, 97:5, 97:7, 116:6, 119:5, 121:11, 122:15, 123:4, 124:16, 124:25, 128:19, 128:22, 129:1, 129:9, 129:19, 129:24, 133:9, 136:22, 136:24, 137:13, 137:15, 137:19, 137:25, 139:19, 140:21, 145:21, 153:10, 154:10, 206:4 2003 [21] - 6:13, 14:6, 15:6, 18:22, 30:14, 32:20, 32:21, 63:11, 71:11, 81:21, 92:17, 97:12, 97:14, 100:23, 117:3, 117:10, 144:11, 153:21, 154:3, 156:13, 161:19 2004 [5] - 15:14, 25:14, 81:21, 98:15, 142:17 2007 [1] - 117:6 2008 [3] - 1:11, 45:15, 256:5 2009 [1] - 256:10 21201 [1] - 1:25 22 [3] - 117:3, 117:9, 142:18 24/7 [1] - 51:22 25 [1] - 43:5 26th [1] - 140:21 27th [7] - 8:25, 10:8, 11:13, 14:5, 16:9, 16:11,	4 4-A [1] - 160:11 40 [16] - 48:3, 48:5, 48:6, 132:14, 159:15, 159:24, 161:16, 200:20, 200:23, 201:3, 202:22, 206:1, 225:5, 226:9, 226:10, 226:19 45 [15] - 14:10, 102:11, 102:14, 102:24, 103:1, 103:4, 103:20, 131:13, 131:20, 131:24, 201:21, 201:24, 202:16, 203:11, 204:24 4:07 [1] - 203:22	9 9 [4] - 201:14, 205:4, 205:7, 205:15 95 [1] - 243:21 9:30 [4] - 227:16, 227:22, 235:16, 254:3 9:55 [1] - 2:1	A a.m [1] - 2:1 Aaron [22] - 119:9, 121:12, 129:18, 131:8, 133:4, 134:11, 144:1, 144:19, 165:9, 165:11, 165:14, 165:19, 177:16, 178:13, 181:14, 197:23, 199:13, 199:16, 199:19, 199:20, 206:2, 217:1 abbreviate [1] - 228:4 able [13] - 26:25, 47:2, 47:4, 47:5, 50:18, 50:20, 54:21, 65:2, 106:5, 119:13, 119:18, 120:1, 239:23 above-mentioned [1] - 71:1 absence [1] - 84:25 Absolutely [2] - 83:3, 146:3 accept [3] - 22:12, 46:7, 115:1 acceptable [1] - 228:19 accepting [1] - 71:19 access [1] - 88:23 accommodate [2] - 228:12, 234:13 accommodating [3] - 232:11, 232:12, 232:24 accommodation [1] -
	2	5 5,000 [1] - 209:15 50 [9] - 38:20, 38:22, 38:24, 48:3, 48:5, 48:6, 50:2, 118:4, 250:18 5515 [1] - 1:24 5:00 [1] - 111:7 5:30 [1] - 243:12 5:40 [1] - 254:5 5th [4] - 12:21, 30:5, 92:16, 105:7	9	
	2	6 6 [1] - 255:5 60 [2] - 118:4, 248:3		

<p>admitted [3] - 83:11, 83:17, 84:5</p> <p>admitting [2] - 18:17, 113:4</p> <p>adult [1] - 40:25</p> <p>advantage [2] - 99:23, 111:22</p> <p>advised [2] - 141:3, 141:5</p> <p>affair [1] - 221:17</p> <p>affairs [1] - 58:11</p> <p>affects [1] - 150:5</p> <p>affixed [1] - 256:9</p> <p>afraid [3] - 5:24, 85:19, 209:10</p> <p>afternoon [7] - 111:5, 118:2, 118:3, 138:11, 151:10, 151:25, 242:14</p> <p>age [2] - 163:23, 165:13</p> <p>agent [1] - 171:12</p> <p>agents [2] - 81:24, 91:3</p> <p>aggregation [1] - 117:13</p> <p>ago [4] - 118:20, 118:25, 133:15, 242:5</p> <p>agree [5] - 48:21, 48:23, 110:17, 157:10, 230:25</p> <p>agreed [7] - 26:6, 62:5, 141:24, 145:4, 154:14, 214:14, 241:17</p> <p>agreement [17] - 70:25, 153:21, 154:2, 154:23, 156:15, 158:21, 158:24, 159:11, 159:13, 160:11, 160:16, 160:22, 161:1, 161:2, 161:3, 161:16, 214:13</p> <p>agreements [1] - 43:11</p> <p>agrees [2] - 156:18, 158:23</p> <p>ahead [22] - 12:20, 15:3, 21:11, 24:18, 28:12, 60:18, 102:4, 107:8, 111:22, 120:6, 123:22, 124:13, 130:2, 137:9, 137:11, 186:6, 186:15, 186:18, 191:2, 240:17</p> <p>aid [2] - 63:11, 86:19</p> <p>ain't [4] - 127:16, 127:17, 128:3, 218:15</p> <p>al [1] - 256:5</p> <p>alias [1] - 94:17</p> <p>alibi [23] - 116:1, 119:19, 119:20, 119:21, 126:1, 126:2, 126:3, 126:7, 126:24, 132:19, 134:4, 134:8, 135:5, 138:14, 142:21, 142:22, 143:13, 143:14, 143:17,</p>	<p>217:6, 217:7, 217:10, 218:4</p> <p>aligned [1] - 5:12</p> <p>allowable [1] - 160:13</p> <p>allowed [3] - 88:5, 161:25, 249:5</p> <p>almost [2] - 130:17, 213:18</p> <p>alone [5] - 3:13, 52:4, 52:9, 173:7, 180:4</p> <p>aloud [1] - 87:16</p> <p>alphabet [1] - 165:21</p> <p>alter [1] - 128:9</p> <p>altercation [1] - 39:13</p> <p>altercations [2] - 39:9, 39:12</p> <p>AMD-04-029 [2] - 1:6, 256:5</p> <p>Amendment [2] - 246:15, 248:1</p> <p>AMERICA [1] - 1:5</p> <p>Amoco [1] - 190:10</p> <p>amount [4] - 81:17, 118:19, 175:12, 232:6</p> <p>amounts [1] - 3:9</p> <p>Amsterdam [1] - 230:3</p> <p>Analog [1] - 81:23</p> <p>analysis [1] - 150:3</p> <p>Andre [1] - 1:13</p> <p>Andrea [2] - 228:13, 233:13</p> <p>angry [1] - 96:12</p> <p>answer [40] - 8:11, 15:3, 26:17, 37:23, 45:23, 45:24, 45:25, 50:9, 52:8, 55:16, 69:1, 74:13, 80:21, 81:10, 96:25, 99:9, 100:6, 106:13, 117:2, 117:5, 125:5, 126:16, 132:13, 143:22, 144:22, 171:18, 176:4, 176:10, 179:6, 181:6, 181:11, 184:9, 197:12, 202:20, 205:21, 218:1, 219:1, 219:20, 226:22, 240:18</p> <p>Answer [3] - 142:22, 144:19, 144:24</p> <p>answering [2] - 22:18, 60:17</p> <p>answers [1] - 14:17</p> <p>Anthony [1] - 132:22</p> <p>anyway [10] - 70:11, 95:22, 198:17, 205:5, 207:16, 209:9, 209:21, 222:20, 227:5, 242:23</p> <p>apart [3] - 161:15, 246:16</p> <p>apartment [7] - 170:3, 214:15, 224:3, 224:6,</p>	<p>224:10, 225:20, 226:5</p> <p>Apartments [4] - 169:25, 183:15, 183:16, 183:21</p> <p>apologize [2] - 64:1, 227:20</p> <p>apparent [1] - 112:25</p> <p>appear [1] - 118:22</p> <p>appearance [1] - 139:14</p> <p>Appearances [1] - 1:15</p> <p>appeared [1] - 97:25</p> <p>Appleton [3] - 207:24, 210:11, 211:16</p> <p>apply [3] - 20:25, 119:20, 241:2</p> <p>appreciate [3] - 111:18, 240:9, 254:2</p> <p>appreciated [1] - 249:11</p> <p>approaching [1] - 3:10</p> <p>appropriate [2] - 150:18, 160:12</p> <p>April [6] - 116:6, 119:4, 121:11, 124:16, 124:25, 133:9</p> <p>area [9] - 66:22, 92:9, 95:7, 96:6, 135:14, 179:18, 184:2, 195:24, 211:16</p> <p>areas [2] - 71:1, 242:11</p> <p>argue [1] - 241:18</p> <p>argued [1] - 96:4</p> <p>arguing [1] - 231:6</p> <p>argument [6] - 4:16, 115:2, 117:23, 246:5, 249:22</p> <p>arranged [1] - 9:14</p> <p>arrays [3] - 59:23, 78:3, 78:16</p> <p>arrest [4] - 44:13, 119:12, 119:16, 121:10</p> <p>arrested [16] - 29:1, 44:9, 77:2, 77:8, 77:10, 90:25, 119:11, 132:4, 133:7, 133:12, 134:15, 134:17, 134:18, 136:16, 153:10, 220:16</p> <p>Arrington [3] - 5:8, 83:1, 148:10</p> <p>arrived [1] - 2:2</p> <p>aside [2] - 69:21, 202:16</p> <p>asleep [2] - 130:17, 194:23</p> <p>assaulting [1] - 109:6</p> <p>assertion [1] - 113:16</p> <p>assist [3] - 68:24, 140:8, 141:6</p> <p>assistance [1] - 52:18</p>	<p>Assistance [1] - 52:19</p> <p>Assistant [2] - 117:4, 143:22</p> <p>assisting [1] - 64:20</p> <p>associates [1] - 93:11</p> <p>assume [14] - 10:2, 23:17, 54:24, 60:5, 60:6, 61:18, 63:8, 63:22, 64:7, 64:14, 65:10, 70:24, 78:8, 117:12</p> <p>assumed [2] - 21:19, 110:4</p> <p>Assuming [1] - 22:6</p> <p>assumption [1] - 128:6</p> <p>assumptions [1] - 240:11</p> <p>assures [1] - 155:7</p> <p>Ategra [1] - 186:24</p> <p>attempt [2] - 3:12, 22:22</p> <p>attempted [5] - 63:3, 86:2, 141:25, 147:22, 223:18</p> <p>attempting [5] - 12:19, 12:21, 21:7, 81:20, 90:19</p> <p>attempts [1] - 27:24</p> <p>attention [10] - 14:25, 77:23, 87:23, 92:11, 121:10, 153:3, 159:7, 169:5, 239:18, 246:2</p> <p>attire [1] - 66:6</p> <p>attitude [1] - 219:22</p> <p>Attorney [2] - 117:4, 143:22</p> <p>attorney [5] - 153:12, 153:14, 154:5, 154:6, 155:19</p> <p>Attorney's [3] - 117:3, 144:12, 156:25</p> <p>attorneys [2] - 84:24, 155:22</p> <p>attributed [1] - 112:14</p> <p>August [9] - 42:11, 44:22, 46:23, 47:20, 56:3, 57:20, 89:23, 97:5, 97:7</p> <p>author [1] - 110:17</p> <p>authorities [11] - 66:14, 68:25, 71:23, 72:13, 139:18, 139:22, 140:12, 140:20, 141:10, 156:23, 160:19</p> <p>Auto [1] - 77:10</p> <p>automatic [1] - 237:23</p> <p>automobile [1] - 246:16</p> <p>autopsy [1] - 253:18</p> <p>available [5] - 121:1, 127:2, 132:11, 132:14, 132:16</p> <p>Avenue [8] - 135:13,</p>	<p>178:2, 180:14, 180:16, 180:17, 208:12, 208:13, 222:23</p> <p>aware [10] - 18:15, 20:13, 40:8, 79:18, 82:5, 82:7, 113:8, 138:24, 140:13, 198:14</p> <p>awful [2] - 6:4, 234:23</p>
B				
<p>background [3] - 88:16, 121:9, 158:17</p> <p>Bacon [8] - 164:17, 165:5, 165:15, 174:21, 183:9, 188:6, 188:7, 188:20</p> <p>bad [2] - 54:12, 192:24</p> <p>badly [1] - 190:22</p> <p>bag [1] - 169:2</p> <p>bagged [1] - 168:14</p> <p>balcony [1] - 233:21</p> <p>ballpark [2] - 38:12, 43:16</p> <p>Baltimore [53] - 1:12, 1:25, 35:11, 35:18, 36:1, 42:14, 48:17, 49:1, 50:12, 50:14, 56:17, 57:2, 67:12, 71:2, 72:14, 77:3, 77:17, 96:6, 97:9, 104:7, 104:8, 104:9, 104:11, 104:16, 104:23, 144:1, 152:4, 152:11, 154:3, 170:20, 170:22, 171:8, 177:16, 177:18, 177:19, 179:12, 179:23, 180:13, 180:25, 182:4, 182:9, 183:13, 183:24, 184:1, 184:7, 184:22, 184:25, 185:1, 188:9, 188:17, 195:25, 207:25, 223:8</p> <p>Bank [1] - 58:12</p> <p>bar [2] - 167:5, 167:9</p> <p>barracks [2] - 61:15, 250:1</p> <p>barroom [3] - 50:11, 50:16, 54:1</p> <p>Barry [2] - 1:22, 146:13</p> <p>based [6] - 88:16, 99:11, 112:16, 116:20, 159:10, 236:2</p> <p>basement [2] - 224:8, 224:20</p> <p>basis [3] - 91:12, 231:10, 246:24</p> <p>bat [1] - 101:7</p> <p>bear [1] - 18:14</p> <p>beat [11] - 49:22, 93:17,</p>				

<p>127:1, 128:7, 207:8, 208:18, 209:5, 209:9, 209:10, 213:7, 217:23</p> <p>beaten [1] - 211:21</p> <p>beating [4] - 42:22, 43:24, 73:4, 207:9</p> <p>became [1] - 80:15</p> <p>become [2] - 62:5, 67:11</p> <p>becomes [2] - 74:13, 74:20</p> <p>becoming [1] - 72:13</p> <p>beef [7] - 104:1, 104:8, 104:20, 105:2, 192:2, 192:16, 193:2</p> <p>beefs [3] - 191:3, 191:6, 191:10</p> <p>began [1] - 87:24</p> <p>begin [1] - 156:9</p> <p>beginning [7] - 84:25, 93:5, 108:2, 136:21, 194:13, 194:14, 205:13</p> <p>Behalf [5] - 1:15, 1:17, 1:18, 1:20, 1:21</p> <p>behalf [1] - 115:6</p> <p>behind [1] - 189:20</p> <p>belabor [2] - 148:12, 150:12</p> <p>belief [1] - 141:23</p> <p>Belinda [1] - 117:21</p> <p>below [1] - 182:25</p> <p>belt [1] - 248:2</p> <p>benefit [1] - 62:14</p> <p>benefits [1] - 109:12</p> <p>Benson [1] - 6:22</p> <p>Benz [2] - 174:24, 235:9</p> <p>best [5] - 128:23, 129:24, 132:2, 137:18, 147:4</p> <p>bet [1] - 31:14</p> <p>better [10] - 4:3, 25:8, 37:2, 44:2, 57:11, 72:12, 85:21, 138:3, 176:15, 214:11</p> <p>betterment [3] - 67:6, 67:16, 68:2</p> <p>between [13] - 25:13, 43:21, 75:19, 112:17, 122:15, 128:22, 146:24, 147:2, 147:18, 165:14, 211:25, 220:23, 237:14</p> <p>Between [2] - 38:22, 43:22</p> <p>beyond [2] - 112:24</p> <p>Big [1] - 195:20</p> <p>big [7] - 37:9, 46:23, 49:9, 50:16, 89:17, 195:19, 233:6</p> <p>bills [2] - 110:8, 110:9</p> <p>bit [7] - 14:19, 65:8,</p>	<p>87:19, 94:15, 121:16, 185:8, 207:17</p> <p>bits [1] - 42:17</p> <p>black [3] - 87:25, 121:22, 162:13</p> <p>blade [1] - 20:9</p> <p>blend [1] - 105:24</p> <p>block [4] - 99:7, 209:23, 211:10, 230:5</p> <p>blue [1] - 80:11</p> <p>Bo [44] - 31:10, 32:1, 52:5, 52:19, 52:24, 53:3, 53:15, 71:15, 75:17, 93:12, 93:14, 93:16, 93:17, 99:4, 102:11, 122:2, 125:25, 126:12, 127:15, 127:23, 134:15, 164:7, 164:9, 164:11, 164:13, 171:16, 171:21, 171:22, 172:23, 176:20, 185:20, 185:22, 186:9, 190:25, 214:22, 215:17, 215:20, 215:23, 216:3, 216:9, 217:4, 217:13, 219:2</p> <p>Bo's [1] - 215:25</p> <p>boasted [3] - 101:20, 101:23, 102:1</p> <p>boasting [3] - 96:17, 102:1, 102:13</p> <p>Boasting [2] - 102:24, 103:1</p> <p>bodies [9] - 132:16, 200:21, 200:24, 201:1, 201:4, 202:23, 203:1, 206:1, 226:20</p> <p>body [1] - 20:20</p> <p>bolster [1] - 113:1</p> <p>Bond [2] - 247:10, 247:15</p> <p>Booking [15] - 22:25, 42:13, 46:24, 47:20, 48:6, 48:8, 50:14, 55:24, 56:4, 56:14, 56:20, 56:23, 89:23, 90:13, 247:20</p> <p>bothering [1] - 203:25</p> <p>Bottom [1] - 160:22</p> <p>bottom [3] - 66:16, 70:21, 160:25</p> <p>bought [4] - 175:10, 175:12, 177:12, 226:13</p> <p>box [2] - 4:10, 87:25</p> <p>Box [2] - 20:6, 20:7</p> <p>boxer [1] - 79:16</p> <p>boxing [1] - 79:16</p> <p>boy [2] - 122:10, 208:10</p> <p>brag [1] - 96:22</p> <p>Branch [4] - 162:5, 163:20, 164:1, 164:14</p>	<p>brawler [1] - 50:17</p> <p>break [11] - 84:12, 85:7, 85:8, 101:17, 111:3, 227:9, 227:11, 229:5, 229:7, 235:12, 243:3</p> <p>breaking [1] - 237:15</p> <p>Breaking [1] - 39:17</p> <p>brief [7] - 111:19, 111:21, 136:6, 203:16, 231:4, 231:5, 235:2</p> <p>Briefly [1] - 146:2</p> <p>briefly [6] - 4:22, 114:7, 119:14, 133:12, 215:4, 232:23</p> <p>bring [9] - 31:21, 32:3, 120:6, 148:12, 159:6, 168:4, 229:4, 239:2, 241:25</p> <p>bringing [1] - 4:7</p> <p>brings [1] - 242:25</p> <p>broken [1] - 231:2</p> <p>brother [2] - 14:1, 115:25</p> <p>brothers [1] - 119:23</p> <p>brought [11] - 5:4, 61:14, 80:11, 80:25, 81:2, 94:8, 106:20, 130:25, 200:23, 242:23, 246:2</p> <p>Bruton [5] - 150:3, 150:9, 244:7, 247:22, 248:11</p> <p>buddy [1] - 104:25</p> <p>building [12] - 55:25, 167:6, 167:9, 214:6, 214:15, 221:24, 223:21, 223:25, 224:4, 224:9, 224:17, 225:1</p> <p>bullets [1] - 233:21</p> <p>bump [1] - 174:8</p> <p>bunch [2] - 92:11, 144:13</p> <p>burden [1] - 148:4</p> <p>burdening [1] - 3:16</p> <p>business [7] - 76:8, 123:12, 138:4, 166:11, 183:6, 237:21</p> <p>button [4] - 127:15, 215:22, 216:3, 216:4</p> <p>buy [13] - 66:8, 167:23, 170:11, 172:5, 172:6, 173:1, 175:21, 176:16, 177:8, 182:2, 187:10</p> <p>buying [3] - 119:21, 173:6, 176:11</p> <p>BY [46] - 6:9, 15:4, 16:16, 24:21, 25:19, 28:20, 31:4, 33:16, 52:14, 73:14, 76:23, 85:25, 100:13, 108:18,</p>	<p>121:4, 122:8, 123:2, 123:23, 124:14, 125:7, 126:23, 130:5, 132:6, 135:1, 136:8, 137:12, 138:10, 141:21, 144:9, 146:5, 151:24, 169:17, 176:9, 186:19, 204:22, 255:5, 255:6, 255:7, 255:8, 255:9, 255:10, 255:13, 255:14, 255:15, 255:16, 255:17</p> <p>Byrnes [16] - 59:5, 59:6, 61:3, 67:10, 67:14, 67:18, 68:9, 68:11, 78:8, 83:14, 97:8, 97:14, 97:22, 97:23, 108:10, 108:11</p>	<p>carpet [7] - 173:22, 173:25, 174:1, 174:5, 174:8, 174:10, 174:17</p> <p>carried [3] - 39:22, 187:4, 227:3</p> <p>carries [1] - 158:10</p> <p>Carry [1] - 39:21</p> <p>carry [8] - 39:24, 40:8, 40:16, 40:18, 49:18, 170:17, 227:5, 227:7</p> <p>carrying [1] - 213:7</p> <p>cars [2] - 12:7, 92:11</p> <p>CASE [1] - 1:6</p> <p>case [26] - 3:23, 4:18, 16:13, 82:2, 82:3, 84:17, 109:13, 144:4, 148:24, 154:6, 154:7, 154:20, 159:22, 193:10, 203:18, 205:13, 227:13, 229:16, 238:3, 238:10, 238:13, 238:14, 240:12, 242:15, 242:20, 242:21</p> <p>cases [1] - 43:13</p> <p>cash [2] - 50:5, 75:24</p> <p>catch [2] - 53:19, 92:2</p> <p>Catonsville [17] - 135:21, 165:7, 165:8, 166:13, 166:14, 167:12, 168:20, 170:20, 178:5, 178:6, 178:9, 180:6, 181:13, 181:18, 199:24, 206:12, 206:19</p> <p>caught [1] - 107:16</p> <p>CBIF [1] - 94:17</p> <p>CD's [3] - 87:1, 101:21, 103:22</p> <p>cell [9] - 50:24, 50:25, 51:19, 51:22, 58:6, 79:13, 80:15, 89:23, 235:9</p> <p>center [2] - 63:6, 184:2</p> <p>Center [12] - 57:2, 146:21, 146:23, 179:13, 179:17, 179:21, 180:20, 184:3, 185:15, 194:17, 194:18, 194:19</p> <p>Central [15] - 22:25, 42:13, 46:24, 47:19, 48:6, 48:7, 50:13, 55:23, 56:3, 56:14, 56:20, 56:22, 89:23, 90:13, 247:20</p> <p>certain [6] - 4:9, 113:8, 113:13, 149:10, 240:10, 241:23</p> <p>certainly [4] - 2:12, 3:7, 149:20, 228:2</p> <p>Certainly [1] - 171:13</p> <p>CERTIFICATE [1] - 256:1</p>
C				
<p>caliber [8] - 132:15, 200:20, 200:23, 201:3, 202:22, 206:1, 226:10, 226:19</p> <p>calm [1] - 2:19</p> <p>camera [2] - 204:5, 249:6</p> <p>candid [1] - 157:1</p> <p>cannot [1] - 230:25</p> <p>cap [4] - 23:3, 159:15, 159:24, 161:16</p> <p>capacity [1] - 157:10</p> <p>car [67] - 8:24, 9:18, 12:8, 29:14, 29:17, 43:24, 79:19, 98:23, 98:24, 99:6, 99:12, 105:20, 109:4, 128:1, 131:7, 132:2, 132:23, 133:3, 147:1, 147:19, 173:2, 173:19, 173:24, 174:1, 174:23, 175:1, 175:7, 187:20, 187:24, 187:25, 194:23, 194:24, 195:1, 195:2, 197:22, 199:16, 200:1, 200:4, 200:5, 200:6, 206:1, 207:7, 207:11, 207:19, 208:15, 209:19, 209:21, 210:1, 210:13, 210:16, 213:1, 218:13, 218:17, 222:12, 222:13, 222:14, 223:12, 224:21, 228:15, 245:5, 250:19, 250:21, 250:23, 251:4, 251:9, 253:5</p> <p>card [4] - 135:4, 142:25, 217:5, 217:8</p> <p>cards [1] - 126:5</p> <p>career [1] - 75:20</p> <p>careful [1] - 47:25</p>				

<p>certify [2] - 256:3, 256:6</p> <p>chair [1] - 5:17</p> <p>chairs [4] - 84:16, 111:8, 203:17, 227:12</p> <p>challenge [1] - 246:22</p> <p>challenged [1] - 246:10</p> <p>chance [7] - 16:20, 82:12, 118:10, 161:12, 225:8, 230:15, 236:13</p> <p>Change [1] - 220:9</p> <p>change [4] - 86:15, 118:5, 220:8, 237:18</p> <p>changed [1] - 119:12</p> <p>changing [1] - 118:19</p> <p>channeling [1] - 204:15</p> <p>character [2] - 91:11, 158:17</p> <p>characterization [2] - 185:17, 191:1</p> <p>characterize [2] - 39:11, 39:24</p> <p>characterized [1] - 34:11</p> <p>charge [21] - 6:16, 77:11, 93:18, 127:1, 127:12, 127:13, 128:7, 153:22, 154:18, 154:22, 155:1, 155:4, 158:7, 158:10, 158:15, 159:3, 161:18, 161:20, 161:24, 217:23</p> <p>charged [5] - 3:22, 116:19, 135:4, 142:24, 217:5</p> <p>charges [3] - 43:11, 44:3, 157:21</p> <p>charging [2] - 157:20, 217:7</p> <p>charming [3] - 36:16, 37:17, 50:3</p> <p>chatter [4] - 33:23, 112:18, 112:25, 114:23</p> <p>check [6] - 76:18, 127:16, 127:17, 127:22, 215:22, 215:23</p> <p>checking [1] - 216:11</p> <p>Cheeks [3] - 157:21, 159:4, 205:11</p> <p>chitchatting [1] - 51:24</p> <p>choice [6] - 64:10, 235:15, 237:14, 238:20</p> <p>choices [1] - 238:19</p> <p>CHRIS [1] - 255:4</p> <p>chronology [1] - 97:3</p> <p>circumstances [2] - 3:11, 3:17</p> <p>citizen [1] - 238:25</p> <p>City [17] - 42:14, 49:1, 50:14, 55:25, 56:17, 56:20, 56:23, 71:2,</p>	<p>152:4, 152:11, 154:3, 170:20, 170:22, 171:8, 177:16, 177:18, 177:19</p> <p>city [6] - 49:2, 179:9, 179:11, 179:15, 181:9, 183:23</p> <p>City's [1] - 48:17</p> <p>claim [10] - 19:5, 19:12, 19:14, 19:15, 19:19, 21:25, 26:22, 96:11, 96:13, 119:22</p> <p>claimed [3] - 19:2, 74:7, 75:11</p> <p>Claire [1] - 26:8</p> <p>clarify [3] - 54:17, 78:19, 97:3</p> <p>clean [8] - 42:4, 65:2, 67:11, 101:1, 101:4, 101:6, 101:11, 109:1</p> <p>clear [25] - 4:15, 17:9, 18:6, 21:17, 21:19, 21:21, 31:5, 32:19, 60:24, 61:2, 68:22, 74:21, 85:2, 113:17, 113:19, 114:14, 148:13, 148:23, 240:8, 241:13, 241:14, 241:16, 245:12, 246:3, 247:22</p> <p>clearer [1] - 32:9</p> <p>Clearly [1] - 114:1</p> <p>clearly [7] - 35:6, 60:15, 116:16, 149:12, 149:14, 249:20, 250:7</p> <p>CLERK [2] - 120:21, 151:19</p> <p>clients [2] - 85:16, 111:19</p> <p>clock [1] - 64:18</p> <p>close [3] - 111:6, 199:6, 204:18</p> <p>Close [1] - 161:23</p> <p>Closer [1] - 146:22</p> <p>closer [3] - 24:25, 89:25, 138:22</p> <p>closest [1] - 199:4</p> <p>clothing [2] - 66:7, 162:12</p> <p>co [3] - 25:5, 76:18, 235:20</p> <p>co-counsel [3] - 25:5, 76:18, 235:20</p> <p>Coburn [21] - 1:22, 2:4, 3:25, 118:9, 118:17, 146:2, 146:13, 229:6, 229:10, 230:24, 232:18, 238:6, 239:7, 240:4, 241:3, 246:10, 248:21, 249:2, 249:5, 252:20, 253:14</p> <p>COBURN [42] - 136:4,</p>	<p>146:3, 146:5, 155:8, 175:23, 179:4, 181:5, 181:10, 191:1, 202:19, 205:19, 216:18, 217:24, 229:11, 231:21, 232:4, 232:8, 232:17, 232:21, 233:1, 233:5, 233:7, 233:11, 233:17, 233:19, 233:24, 234:1, 234:6, 234:8, 234:10, 234:14, 234:18, 234:21, 235:1, 246:14, 248:25, 252:14, 252:16, 252:18, 253:15, 254:2, 255:16</p> <p>Coburn's [5] - 231:1, 238:15, 240:13, 252:25, 253:7</p> <p>cocaine [10] - 175:10, 181:22, 181:25, 185:3, 244:6, 250:18, 251:1, 251:5, 251:9, 253:5</p> <p>Cocaine [1] - 64:11</p> <p>coconspirator [7] - 116:13, 118:16, 118:17, 118:19, 119:3, 119:25, 151:1</p> <p>coconspirators [1] - 116:23</p> <p>coherently [1] - 3:12</p> <p>Coke [2] - 166:8, 196:6</p> <p>coke [3] - 172:6, 173:6, 250:21</p> <p>collect [5] - 34:9, 36:9, 36:10, 40:13, 50:3</p> <p>collected [2] - 34:6, 38:24</p> <p>collecting [2] - 38:10, 39:23</p> <p>collector [1] - 65:22</p> <p>Collins [2] - 77:13, 77:19</p> <p>colloquy [1] - 253:19</p> <p>color [1] - 222:18</p> <p>coming [9] - 25:6, 67:17, 81:15, 99:24, 115:8, 134:14, 150:12, 194:9, 235:9</p> <p>comma [1] - 71:2</p> <p>comment [1] - 150:2</p> <p>comments [1] - 4:23</p> <p>commission [1] - 157:22</p> <p>commit [6] - 43:9, 44:17, 52:24, 121:12, 157:18, 160:9</p> <p>committed [13] - 32:2, 43:23, 43:25, 44:5, 44:12, 48:15, 52:16, 54:5, 56:11, 80:16, 96:10, 103:7, 124:6</p>	<p>committing [2] - 66:14, 109:23</p> <p>common [1] - 231:1</p> <p>community [4] - 55:4, 55:5, 55:8, 67:11</p> <p>Compared [1] - 31:8</p> <p>complete [3] - 157:1, 228:20, 256:8</p> <p>completely [1] - 160:8</p> <p>completes [1] - 159:12</p> <p>completion [1] - 232:15</p> <p>complex [1] - 119:9</p> <p>conceal [1] - 174:6</p> <p>concern [4] - 231:21, 231:22, 239:22, 240:3</p> <p>concerned [7] - 17:7, 19:15, 34:2, 34:3, 40:12, 198:17, 241:24</p> <p>concerning [4] - 58:9, 103:18, 157:1, 157:2</p> <p>concerns [2] - 230:17, 237:16</p> <p>conclude [1] - 227:17</p> <p>concluded [1] - 145:24</p> <p>Conclusion [1] - 254:5</p> <p>concurrently [1] - 159:25</p> <p>condition [4] - 41:23, 63:16, 69:13, 70:25</p> <p>conditions [8] - 20:25, 41:8, 62:20, 63:19, 109:24, 156:19, 157:17, 159:12</p> <p>Conduct [1] - 227:13</p> <p>conduct [2] - 120:11, 158:17</p> <p>confer [1] - 235:19</p> <p>conference [1] - 242:6</p> <p>confessed [2] - 54:2, 102:19</p> <p>confession [2] - 54:8, 80:16</p> <p>confessions [1] - 53:22</p> <p>confirm [1] - 95:13</p> <p>confirmed [3] - 18:18, 18:19, 18:20</p> <p>confirms [1] - 113:23</p> <p>confused [2] - 23:17, 244:14</p> <p>connection [5] - 158:14, 165:14, 197:8, 218:11, 253:16</p> <p>conscience [7] - 57:10, 57:14, 66:25, 67:3, 68:3, 69:19, 72:12</p> <p>consented [1] - 146:8</p> <p>consider [6] - 244:21, 244:22, 245:9, 246:24, 249:23, 253:12</p> <p>considered [6] - 2:13,</p>	<p>102:21, 114:3, 186:14, 250:12, 251:12</p> <p>considers [1] - 160:12</p> <p>consignment [2] - 167:24, 167:25</p> <p>conspiracies [6] - 148:23, 148:24, 148:25, 149:4, 149:15, 149:18</p> <p>conspiracy [19] - 113:6, 114:5, 115:20, 116:18, 116:19, 120:3, 120:7, 149:1, 149:2, 149:8, 149:13, 149:14, 149:20, 149:21, 150:8, 150:14</p> <p>constitute [3] - 14:18, 160:10, 256:6</p> <p>Construction [2] - 65:12, 66:5</p> <p>consult [2] - 111:19, 112:1</p> <p>contact [2] - 128:18, 129:15</p> <p>contacted [4] - 105:13, 105:14, 107:24, 108:2</p> <p>containing [1] - 251:5</p> <p>context [3] - 60:6, 128:13, 132:20</p> <p>continue [8] - 3:20, 6:6, 143:4, 151:6, 151:11, 156:24, 172:11, 228:18</p> <p>Continue [2] - 84:17, 203:19</p> <p>CONTINUED [1] - 6:8</p> <p>continuing [3] - 91:12, 150:12, 150:25</p> <p>contract [2] - 35:22, 158:24</p> <p>contrary [1] - 118:5</p> <p>conversation [36] - 7:1, 7:3, 10:9, 10:10, 11:8, 15:14, 21:6, 21:13, 21:15, 21:24, 22:14, 25:13, 29:6, 29:7, 56:12, 58:20, 59:21, 60:5, 76:16, 79:13, 82:7, 82:8, 93:5, 96:14, 105:7, 125:12, 125:22, 132:2, 133:15, 133:20, 146:24, 147:18, 205:25, 209:17, 211:5, 215:14</p> <p>conversations [20] - 18:4, 21:1, 21:5, 23:11, 32:15, 42:9, 57:20, 80:14, 81:20, 82:10, 88:12, 88:24, 98:8, 98:11, 105:6, 112:17, 112:24, 113:14, 114:24, 157:11</p> <p>convicted [14] - 2:8, 3:21, 4:19, 41:3, 43:2,</p>
--	--	---	--	--

<p>43:9, 43:10, 144:5, 152:12, 152:14, 152:16, 152:17, 152:24, 231:7 conviction [1] - 44:13 convictions [2] - 43:13, 44:18 convinced [1] - 241:24 cook [3] - 181:19, 181:22, 181:25 cooked [2] - 181:20, 181:21 cool [1] - 210:20 cooperate [6] - 3:14, 66:13, 72:13, 156:9, 156:19, 156:24 cooperated [1] - 71:23 cooperating [2] - 62:6, 63:23 cooperation [6] - 100:20, 100:24, 156:15, 158:16, 159:11, 160:16 cooperator [1] - 6:16 coordinating [1] - 140:25 Cop [1] - 43:11 copies [1] - 5:20 copy [2] - 83:24, 117:5 Corey [3] - 192:5, 192:6, 192:12 corner [1] - 167:6 corners [1] - 50:12 Correct [25] - 7:6, 11:9, 13:12, 26:19, 30:20, 41:19, 52:17, 52:22, 89:9, 91:5, 97:16, 98:2, 101:8, 104:24, 105:15, 106:4, 109:2, 109:18, 110:19, 154:8, 158:4, 158:21, 160:5, 216:3, 250:23 correct [155] - 2:12, 2:16, 7:5, 8:8, 9:15, 9:21, 10:1, 10:10, 10:13, 10:22, 11:8, 11:14, 11:24, 14:9, 15:8, 15:11, 15:15, 15:20, 15:23, 16:4, 17:2, 18:12, 18:23, 19:2, 19:5, 23:9, 23:16, 26:2, 26:4, 26:12, 26:15, 26:23, 27:1, 27:4, 28:21, 29:24, 31:15, 32:23, 33:1, 33:5, 33:9, 41:16, 41:22, 52:16, 52:18, 62:25, 74:10, 74:14, 74:18, 76:12, 77:3, 77:6, 77:21, 77:22, 78:11, 78:16, 79:9, 79:10, 80:7, 80:12, 81:13, 88:14, 90:21, 91:1, 91:4, 93:18, 94:2, 94:19, 95:1, 95:15,</p>	<p>95:23, 96:1, 96:7, 96:20, 97:6, 97:10, 97:15, 97:19, 97:23, 98:1, 98:5, 99:2, 100:1, 100:2, 100:7, 100:18, 104:3, 104:12, 105:17, 107:1, 107:2, 107:22, 133:17, 135:2, 136:9, 136:22, 138:25, 139:3, 139:12, 141:14, 143:15, 143:18, 145:13, 147:9, 147:23, 152:25, 155:4, 155:23, 156:13, 157:4, 157:12, 157:15, 158:8, 159:4, 159:19, 161:10, 161:25, 165:2, 168:11, 168:18, 174:11, 175:10, 175:17, 176:21, 177:3, 179:18, 180:11, 180:14, 180:18, 181:14, 182:19, 183:24, 187:21, 189:2, 192:20, 192:25, 196:19, 202:18, 203:9, 207:4, 207:19, 208:19, 210:14, 211:22, 212:4, 212:18, 214:24, 216:16, 220:14, 221:6, 221:8, 221:25, 222:2, 224:1 Correctional [3] - 56:17, 57:7, 77:25 correctly [2] - 73:17, 182:24 corroborate [1] - 54:12 corroboration [1] - 72:4 cost [1] - 175:19 cot [1] - 37:5 Counsel [1] - 111:17 counsel [19] - 2:7, 3:14, 15:1, 16:13, 25:5, 76:18, 85:4, 85:16, 111:12, 111:16, 111:18, 112:1, 112:3, 136:6, 228:3, 235:20, 240:10, 241:18, 254:3 counsel's [5] - 3:2, 14:16, 14:18, 15:1, 52:12 Count [2] - 158:1, 158:2 count [4] - 38:13, 157:19, 157:21, 213:18 counting [3] - 187:1, 187:9, 213:19 counts [1] - 235:7 County [3] - 57:2, 97:9, 144:2 Couple [1] - 178:25 couple [44] - 29:2, 29:10, 30:6, 45:8, 56:5, 64:6, 72:11, 73:20, 75:10, 92:17, 94:1, 95:25, 97:2, 98:3, 98:4,</p>	<p>121:10, 123:16, 132:23, 137:25, 142:14, 143:9, 143:10, 143:15, 143:18, 144:24, 145:2, 145:7, 145:12, 147:5, 155:15, 163:3, 163:4, 167:22, 172:1, 178:24, 179:1, 179:7, 188:3, 211:7, 212:17, 215:11, 215:12, 229:1, 242:17 course [15] - 4:5, 4:12, 6:6, 26:14, 70:3, 116:3, 146:14, 172:15, 186:17, 227:18, 232:8, 232:24, 235:21, 236:7 Court [48] - 2:22, 2:25, 3:9, 3:18, 3:20, 4:4, 24:16, 70:25, 111:13, 111:25, 112:2, 112:15, 112:20, 112:23, 113:3, 113:8, 113:13, 113:15, 113:23, 114:13, 115:6, 115:9, 116:24, 117:7, 117:16, 117:22, 118:3, 118:15, 118:16, 118:18, 118:20, 148:3, 148:6, 149:8, 149:9, 158:16, 160:12, 204:2, 236:5, 236:6, 239:5, 241:20, 241:22, 241:23, 244:8, 245:18, 253:6, 256:15 court [21] - 4:20, 25:2, 43:19, 71:17, 71:18, 78:20, 108:10, 109:25, 110:2, 158:7, 159:3, 161:10, 180:2, 230:9, 231:7, 231:16, 236:21, 236:22, 237:20, 237:25, 238:12 COURT [351] - 1:1, 2:2, 2:17, 4:25, 5:3, 5:7, 5:11, 5:16, 5:22, 5:25, 6:3, 14:16, 16:15, 22:7, 22:18, 23:3, 23:7, 23:22, 24:1, 24:7, 24:10, 24:12, 24:15, 24:18, 24:24, 25:3, 25:10, 25:15, 25:18, 27:10, 27:12, 28:9, 28:12, 30:25, 31:2, 33:13, 36:20, 37:16, 37:23, 38:6, 38:8, 44:20, 46:10, 47:25, 50:1, 50:9, 52:8, 52:11, 54:15, 55:16, 58:14, 62:4, 67:25, 70:17, 72:8, 72:10, 72:17, 73:3, 73:6, 73:8, 73:10, 76:21, 80:21, 81:5, 81:10, 82:23, 82:25, 83:3, 83:11, 83:15, 83:17, 83:21, 83:24, 84:1, 84:3,</p>	<p>84:5, 84:8, 84:14, 84:21, 84:23, 85:7, 85:12, 85:14, 85:20, 85:23, 87:19, 87:21, 89:8, 89:25, 96:25, 99:9, 99:14, 100:6, 100:9, 100:15, 104:19, 108:15, 110:21, 110:25, 111:2, 111:12, 111:17, 111:24, 112:8, 112:13, 114:9, 114:13, 114:18, 114:20, 114:25, 115:11, 115:21, 116:3, 116:7, 117:8, 117:11, 117:17, 117:20, 117:25, 118:7, 118:21, 119:6, 120:4, 120:15, 120:25, 121:16, 122:6, 122:25, 123:14, 123:19, 123:22, 124:9, 124:11, 124:13, 125:5, 126:16, 126:21, 127:4, 128:11, 128:15, 128:17, 129:1, 129:3, 129:5, 129:8, 129:10, 129:13, 129:17, 129:19, 129:21, 129:23, 130:2, 130:12, 130:20, 130:22, 131:16, 131:18, 131:20, 131:23, 132:1, 132:5, 132:13, 132:18, 133:1, 134:5, 134:17, 134:19, 134:22, 134:24, 136:2, 136:5, 136:17, 137:9, 137:11, 138:8, 140:7, 140:17, 140:23, 141:4, 141:16, 141:19, 144:4, 144:7, 145:24, 146:2, 146:10, 146:12, 146:22, 148:3, 148:10, 148:18, 148:22, 149:12, 149:17, 149:23, 150:7, 150:16, 150:21, 150:25, 151:4, 151:9, 151:15, 155:11, 162:16, 163:13, 169:15, 171:13, 171:18, 175:24, 176:4, 176:6, 176:8, 179:6, 180:4, 181:6, 181:11, 182:13, 184:9, 185:12, 185:18, 186:3, 186:6, 186:8, 186:12, 186:17, 191:2, 197:12, 202:20, 203:14, 203:16, 203:24, 204:2, 204:5, 204:8, 204:12, 204:15, 204:18, 204:21, 205:21, 206:8, 216:19, 217:21, 218:1, 219:1, 219:20, 220:3, 220:19, 225:9, 225:13, 226:22, 227:10, 227:25, 228:5, 228:13, 228:15, 228:19, 228:23, 229:3, 229:10,</p>	<p>230:8, 230:12, 230:21, 231:5, 231:10, 231:15, 231:20, 232:1, 232:7, 232:10, 232:18, 232:25, 233:3, 233:6, 233:10, 233:16, 233:18, 233:22, 233:25, 234:4, 234:7, 234:9, 234:12, 234:16, 234:19, 234:23, 235:14, 235:21, 235:25, 236:7, 236:10, 236:19, 236:24, 237:2, 237:6, 237:17, 237:21, 238:24, 239:4, 239:9, 239:19, 240:1, 240:24, 241:12, 241:16, 242:20, 243:14, 243:25, 244:14, 244:20, 244:25, 245:6, 245:9, 245:12, 245:22, 246:1, 246:4, 246:9, 246:13, 246:15, 246:21, 247:3, 247:13, 247:16, 247:24, 248:12, 248:16, 249:1, 249:5, 249:9, 249:16, 250:5, 250:14, 250:20, 250:23, 250:25, 251:4, 251:7, 251:16, 251:21, 252:2, 252:6, 252:9, 252:12, 252:15, 252:19, 252:24, 253:6, 253:10, 253:14, 253:25, 254:3 Court's [22] - 3:12, 4:15, 4:21, 58:23, 66:20, 73:11, 112:13, 114:9, 114:19, 114:20, 115:1, 115:18, 116:11, 116:12, 118:5, 138:6, 146:7, 146:11, 159:6, 230:14, 236:3, 240:5 courteous [1] - 229:13 Courthouse [1] - 1:24 courtroom [27] - 6:2, 25:7, 54:2, 81:8, 84:20, 84:22, 85:2, 85:22, 111:11, 111:14, 112:3, 112:12, 120:12, 144:11, 151:8, 162:9, 163:7, 164:9, 165:2, 193:3, 203:23, 203:24, 204:14, 204:20, 227:23, 227:24 Cousins [1] - 165:16 cousins [1] - 165:17 cover [1] - 66:22 Crack [9] - 64:11, 166:19, 178:10, 179:16, 181:12, 184:21, 185:6, 206:14, 206:18 crack [22] - 166:9, 167:4, 167:11, 167:12, 167:16, 167:23, 168:7,</p>
--	---	--	--	--

<p>168:10, 168:13, 168:24, 178:16, 178:19, 181:13, 181:17, 181:18, 181:20, 181:23, 181:25, 182:2, 185:3, 185:5</p> <p>created [1] - 217:7</p> <p>credibility [1] - 231:23</p> <p>credit [5] - 126:4, 135:4, 142:25, 217:5, 217:7</p> <p>credits [2] - 113:13, 113:15</p> <p>Cressida [2] - 175:2, 175:3</p> <p>crime [15] - 43:2, 43:20, 43:23, 44:12, 52:16, 52:24, 60:3, 60:4, 80:16, 99:17, 102:18, 103:7, 103:14, 103:16, 157:22</p> <p>crimes [20] - 41:3, 43:9, 43:20, 44:16, 48:15, 66:14, 88:22, 101:20, 102:1, 102:2, 102:3, 102:6, 102:13, 109:23, 152:12, 152:14, 157:18, 160:10, 160:20, 203:8</p> <p>CRIMINAL [1] - 1:6</p> <p>criminal [13] - 56:10, 58:12, 59:1, 66:2, 72:18, 72:23, 79:13, 88:17, 89:1, 94:13, 96:16, 96:22, 156:10</p> <p>Criminal [1] - 58:21</p> <p>critical [6] - 62:23, 64:7, 229:23, 230:23, 235:6, 235:11</p> <p>CROSS [12] - 6:8, 33:15, 73:13, 136:7, 138:9, 146:4, 255:5, 255:6, 255:7, 255:14, 255:15, 255:16</p> <p>cross [36] - 3:25, 74:6, 77:1, 77:12, 88:2, 90:18, 91:22, 94:7, 94:24, 98:3, 112:22, 113:9, 120:12, 228:4, 230:15, 230:19, 230:23, 231:2, 231:12, 231:25, 232:14, 233:7, 234:22, 235:4, 235:13, 236:1, 237:13, 238:17, 239:10, 239:16, 239:23, 240:18, 240:20, 242:10, 252:21, 253:7</p> <p>crossed [2] - 229:21, 248:21</p> <p>crossing [1] - 146:9</p> <p>crowd [3] - 12:9, 12:10, 18:11</p> <p>Crowe [10] - 1:20, 115:22, 116:4, 117:21, 118:21, 140:7, 140:17,</p>	<p>141:4, 145:25, 239:4</p> <p>CROWE [38] - 115:13, 115:23, 116:5, 116:9, 117:10, 117:22, 118:1, 126:15, 126:20, 127:3, 132:12, 134:3, 138:10, 141:18, 141:21, 144:5, 144:8, 144:9, 146:1, 169:14, 171:17, 176:3, 184:8, 185:11, 185:16, 186:16, 197:11, 205:20, 206:7, 217:25, 218:25, 219:19, 220:2, 220:18, 226:21, 239:5, 239:10, 255:15</p> <p>Crowe's [2] - 234:23, 234:24</p> <p>Cumberland [2] - 61:12, 61:15</p> <p>curative [1] - 115:8</p> <p>custody [2] - 241:11, 242:7</p> <p>customer [1] - 187:15</p> <p>cut [2] - 101:17, 150:8</p> <p>cutter [3] - 20:6, 20:7, 88:1</p> <p>cutting [1] - 120:5</p>	<p>190:25</p> <p>date [8] - 11:20, 15:9, 23:18, 25:24, 28:3, 28:13, 136:19, 186:22</p> <p>dated [2] - 117:2, 154:10</p> <p>dates [5] - 12:23, 14:14, 15:1, 23:17, 128:24</p> <p>David [4] - 229:25, 230:13, 232:5, 233:13</p> <p>Davis [3] - 1:13, 161:9, 235:15</p> <p>Davon [1] - 210:5</p> <p>days [7] - 19:24, 211:7, 212:17, 215:11, 215:12, 224:14, 224:16</p> <p>DEA-6 [2] - 23:5, 252:18</p> <p>deal [8] - 2:19, 44:3, 46:14, 89:17, 176:15, 185:8, 220:21, 233:6</p> <p>dealer [16] - 22:25, 28:17, 36:7, 89:13, 90:8, 90:9, 90:10, 91:10, 106:8, 106:21, 106:22, 195:18, 195:19, 195:20, 202:13</p> <p>dealers [16] - 22:21, 34:18, 40:3, 40:8, 75:20, 75:24, 76:6, 76:11, 89:19, 89:21, 91:7, 94:6, 132:23, 140:4, 188:11, 188:17</p> <p>dealing [5] - 113:5, 123:13, 166:4, 187:12, 244:3</p> <p>dealings [1] - 138:4</p> <p>dealt [1] - 166:9</p> <p>Dean [2] - 117:4, 143:23</p> <p>death [2] - 147:15, 147:21</p> <p>debrief [2] - 11:2, 14:6</p> <p>debriefed [2] - 16:4, 19:8</p> <p>debriefing [2] - 140:19, 140:21</p> <p>debt [8] - 34:9, 36:13, 38:10, 38:24, 39:23, 40:13, 50:3, 65:22</p> <p>debtor [1] - 37:20</p> <p>December [15] - 11:19, 14:6, 15:6, 18:22, 19:24, 29:2, 89:11, 98:20, 107:17, 107:21, 107:23, 107:24, 108:2</p> <p>decide [1] - 160:8</p> <p>decided [5] - 57:11, 59:3, 72:12, 97:23, 187:17</p> <p>decision [4] - 3:15, 4:2, 4:13, 240:4</p>	<p>decisions [1] - 2:23</p> <p>dedicated [1] - 204:24</p> <p>Defendant [4] - 1:17, 1:18, 1:20, 1:21</p> <p>defendant [11] - 2:23, 156:18, 156:21, 156:24, 157:25, 159:10, 159:12, 159:14, 160:9, 162:15, 246:7</p> <p>defendant's [2] - 159:8, 159:11</p> <p>defendants [21] - 2:10, 4:17, 84:24, 85:3, 85:9, 112:1, 112:4, 112:5, 116:8, 116:10, 121:17, 122:5, 146:8, 149:7, 151:1, 186:21, 188:5, 193:3, 240:16, 244:19, 247:12</p> <p>Defendants [2] - 1:9, 112:9</p> <p>defense [6] - 16:13, 85:16, 228:3, 238:14, 238:18, 241:20</p> <p>Define [1] - 67:2</p> <p>Definitely [1] - 60:15</p> <p>definitely [2] - 229:13, 250:17</p> <p>degree [3] - 152:16, 154:2, 157:20</p> <p>Delaware [2] - 23:1, 106:21</p> <p>delays [1] - 227:20</p> <p>demonstrably [1] - 113:7</p> <p>Denham's [1] - 241:8</p> <p>denied [2] - 115:11, 115:12</p> <p>Deputy [1] - 112:4</p> <p>describe [1] - 80:18</p> <p>described [6] - 34:7, 80:22, 80:23, 99:1, 99:2</p> <p>description [2] - 25:8, 95:14</p> <p>designed [1] - 235:5</p> <p>desire [1] - 99:15</p> <p>despite [1] - 227:19</p> <p>detail [6] - 52:2, 60:11, 60:23, 79:24, 148:5, 157:8</p> <p>detailed [1] - 155:15</p> <p>details [3] - 55:15, 55:20, 231:24</p> <p>detained [1] - 250:1</p> <p>detective [7] - 8:2, 33:25, 61:9, 127:25, 128:4</p> <p>Detective [26] - 6:13, 6:19, 10:22, 15:10, 15:22, 16:1, 17:2, 19:8,</p>	<p>19:11, 20:19, 22:1, 22:3, 22:10, 22:17, 23:4, 23:20, 23:23, 24:2, 55:18, 55:19, 59:18, 59:20, 94:25, 95:2, 241:7, 246:19</p> <p>detectives [26] - 6:13, 9:8, 13:6, 17:11, 34:8, 46:14, 61:3, 61:9, 69:2, 77:24, 80:3, 80:23, 81:3, 81:6, 81:25, 82:15, 87:1, 91:3, 91:16, 92:1, 95:13, 103:11, 103:14, 127:20, 134:16, 218:12</p> <p>detectors [1] - 88:7</p> <p>Detention [1] - 57:2</p> <p>determine [5] - 3:5, 3:6, 41:20, 104:18, 114:4</p> <p>determining [1] - 159:17</p> <p>develop [1] - 195:10</p> <p>developed [1] - 196:24</p> <p>device [3] - 7:11, 81:22, 95:25</p> <p>devices [8] - 7:8, 7:15, 7:16, 8:6, 8:15, 20:20, 81:19, 88:23</p> <p>dictating [1] - 68:3</p> <p>difference [2] - 138:12, 232:13</p> <p>Different [1] - 109:11</p> <p>different [18] - 8:4, 53:4, 58:2, 58:6, 109:10, 117:14, 148:23, 149:1, 160:19, 171:1, 172:1, 172:2, 219:22, 220:10, 230:16, 236:2, 251:16</p> <p>difficult [5] - 68:6, 105:24, 219:12, 219:14, 237:12</p> <p>difficulty [1] - 140:25</p> <p>digging [1] - 87:24</p> <p>digital [1] - 81:23</p> <p>dip [2] - 227:6, 227:8</p> <p>dire [1] - 242:2</p> <p>direct [23] - 74:24, 77:13, 95:10, 112:21, 113:9, 140:21, 143:21, 146:14, 223:14, 228:2, 228:20, 229:4, 229:18, 231:2, 231:24, 232:1, 232:15, 235:12, 237:14, 237:15, 238:17, 248:20</p> <p>DIRECT [4] - 121:3, 151:23, 255:13, 255:17</p> <p>direction [2] - 220:8, 220:9</p> <p>directly [4] - 120:21, 150:5, 151:6, 151:19</p> <p>Dirty [15] - 207:11,</p>
D				
<p>danger [1] - 86:17</p> <p>dangerous [1] - 82:19</p> <p>Danny [1] - 6:21</p> <p>Darius [45] - 119:11, 124:16, 141:25, 202:6, 202:7, 202:10, 202:12, 202:14, 203:12, 207:3, 207:7, 207:12, 207:16, 207:18, 208:2, 208:7, 209:13, 211:20, 211:21, 211:25, 212:3, 212:10, 212:15, 213:3, 213:4, 213:6, 213:11, 213:17, 213:22, 214:1, 214:4, 214:9, 220:13, 220:14, 220:17, 220:22, 220:24, 220:25, 221:5, 221:6, 221:8, 221:24, 223:19, 225:19, 226:6</p> <p>Darius's [3] - 209:19, 213:7, 221:16</p> <p>dark [1] - 209:3</p> <p>Darryl [23] - 132:22, 164:17, 165:5, 165:14, 172:23, 173:5, 174:21, 176:19, 183:8, 183:9, 186:5, 186:7, 186:10, 186:24, 187:23, 188:6, 188:7, 188:20, 190:1, 190:2, 190:5, 190:20,</p>				

<p>207:13, 210:2, 210:4, 210:16, 210:21, 211:2, 211:24, 212:1, 212:2, 212:6, 212:7, 212:9, 213:2</p> <p>disadvantage [1] - 238:7</p> <p>disagree [1] - 232:11</p> <p>disclosed [2] - 16:12, 52:2</p> <p>disclosing [2] - 52:5, 56:10</p> <p>disclosures [1] - 113:17</p> <p>discovered [1] - 82:9</p> <p>discovery [3] - 16:13, 82:16, 136:6</p> <p>discretion [1] - 159:17</p> <p>discuss [9] - 54:18, 58:11, 58:12, 58:15, 65:1, 192:15, 193:2, 195:5, 205:23</p> <p>discussed [4] - 2:5, 99:18, 131:10, 231:22</p> <p>discussing [7] - 28:19, 54:6, 59:20, 59:25, 60:3, 75:20, 136:10</p> <p>discussion [23] - 76:4, 76:10, 78:15, 80:7, 84:17, 111:9, 130:11, 130:12, 130:13, 131:7, 134:6, 134:7, 146:25, 195:3, 199:13, 199:14, 199:16, 202:25, 203:18, 208:16, 221:15, 227:12</p> <p>discussions [6] - 3:15, 74:5, 74:10, 74:15, 91:9, 93:12</p> <p>display [2] - 253:16, 254:1</p> <p>displayed [1] - 83:8</p> <p>disposed [1] - 229:13</p> <p>disposition [3] - 36:16, 37:18, 50:4</p> <p>disregard [3] - 169:15, 186:12, 244:13</p> <p>dissociated [1] - 239:13</p> <p>distort [2] - 60:22, 95:19</p> <p>distracted [1] - 58:25</p> <p>distress [2] - 86:4, 86:11</p> <p>District [1] - 71:2</p> <p>DISTRICT [2] - 1:1, 1:2</p> <p>district [1] - 142:6</p> <p>disturb [1] - 60:21</p> <p>DIVISION [1] - 1:2</p> <p>DOAR [4] - 5:21, 5:22, 25:23, 248:22</p> <p>DOBROPOLSKI [1] -</p>	<p>255:4</p> <p>Dobropolski [44] - 5:4, 6:6, 6:10, 6:11, 24:22, 25:13, 25:21, 27:23, 28:10, 31:5, 32:19, 33:11, 33:13, 50:10, 73:15, 73:18, 73:19, 76:24, 78:19, 83:6, 83:14, 84:21, 86:1, 86:21, 87:18, 88:16, 89:19, 97:4, 99:21, 100:16, 111:2, 112:18, 112:22, 112:24, 113:4, 113:8, 113:12, 113:19, 114:23, 228:6, 241:9, 242:25</p> <p>Dobropolski's [4] - 112:25, 113:15, 115:7, 241:19</p> <p>document [6] - 83:5, 153:17, 154:9, 156:12, 204:5, 249:6</p> <p>documents [2] - 153:2, 157:6</p> <p>Dodge [2] - 65:8, 222:16</p> <p>dollars [6] - 109:15, 142:14, 145:7, 145:13, 179:1, 188:3</p> <p>domestic [2] - 42:20, 62:10</p> <p>done [19] - 31:23, 42:24, 67:22, 85:17, 86:24, 87:2, 88:9, 88:24, 101:16, 117:4, 120:17, 161:19, 182:21, 187:6, 213:18, 217:4, 228:2, 234:14, 237:8</p> <p>double [6] - 32:17, 74:20, 74:22, 99:17, 102:19, 103:3</p> <p>doubt [3] - 38:21, 113:1, 234:21</p> <p>Dovell [3] - 35:13, 35:15, 35:16</p> <p>down [37] - 5:5, 10:24, 12:24, 13:8, 14:8, 15:19, 15:24, 16:5, 16:8, 16:18, 17:16, 18:5, 69:4, 110:16, 110:22, 130:18, 135:6, 137:18, 139:6, 139:10, 145:19, 155:1, 167:6, 177:11, 180:6, 180:25, 183:18, 185:15, 188:9, 190:5, 195:24, 207:22, 211:9, 211:10, 212:20, 212:21, 212:23</p> <p>Downtown [1] - 6:5</p> <p>dozen [1] - 29:3</p> <p>draw [1] - 112:23</p>	<p>drawing [1] - 112:22</p> <p>drawn [1] - 112:19</p> <p>dreads [1] - 60:20</p> <p>drive [2] - 105:21, 172:20</p> <p>driven [1] - 250:21</p> <p>driving [9] - 195:1, 200:4, 200:6, 209:22, 209:23, 211:9, 222:14, 228:15, 251:4</p> <p>dropped [1] - 145:18</p> <p>drove [9] - 172:17, 172:19, 172:22, 172:23, 172:24, 176:20, 223:19, 224:16</p> <p>drug [43] - 22:21, 34:4, 34:15, 36:7, 38:10, 38:25, 40:3, 40:8, 49:4, 62:24, 64:10, 64:14, 75:20, 75:24, 76:6, 76:11, 77:12, 77:16, 77:17, 89:5, 89:13, 89:19, 89:21, 90:8, 91:7, 91:10, 94:6, 110:3, 113:5, 132:23, 135:7, 149:13, 166:18, 178:2, 178:9, 181:16, 182:5, 188:17, 195:18, 195:19, 195:20</p> <p>Drug [5] - 34:18, 123:13, 135:9, 188:11, 202:13</p> <p>drugs [68] - 40:1, 41:13, 41:21, 43:24, 62:21, 63:20, 64:3, 64:4, 65:20, 65:21, 76:1, 76:3, 76:6, 93:2, 93:3, 96:5, 98:5, 98:7, 98:19, 106:25, 107:19, 107:22, 108:6, 108:8, 108:12, 124:3, 135:10, 135:17, 140:3, 166:4, 166:7, 168:17, 170:19, 171:16, 172:4, 173:1, 176:16, 177:8, 177:13, 177:15, 177:17, 177:22, 177:24, 177:25, 179:14, 181:8, 183:3, 183:12, 183:13, 184:18, 184:20, 189:9, 189:10, 192:14, 196:4, 196:7, 196:11, 206:5, 206:21, 212:13, 213:12, 218:10, 218:16, 244:3, 245:5</p> <p>Druid [2] - 182:25</p> <p>duct [1] - 225:3</p> <p>dude [9] - 60:9, 169:25, 170:5, 186:25, 187:9, 190:13, 190:14, 207:8, 215:21</p> <p>dudes [1] - 188:25</p>	<p>During [5] - 91:22, 108:8, 122:25, 169:11, 252:9</p> <p>during [21] - 21:16, 28:25, 53:10, 56:11, 58:4, 64:20, 64:25, 126:6, 135:6, 146:6, 146:14, 150:18, 156:23, 177:5, 232:24, 244:6, 249:25, 252:25, 253:3, 253:7</p>	<p>element [1] - 120:7</p> <p>elementary [3] - 162:2, 162:4, 162:6</p> <p>Elementary [5] - 162:5, 163:21, 164:1, 164:14</p> <p>elements [1] - 120:16</p> <p>elicited [2] - 81:1, 175:1</p> <p>ELMO [1] - 252:20</p> <p>elsewhere [2] - 178:4, 206:21</p> <p>emotional [2] - 233:23, 234:5</p> <p>employ [1] - 113:21</p> <p>end [11] - 44:17, 93:25, 98:10, 149:4, 149:5, 193:23, 193:24, 194:13, 209:17, 243:24, 244:3</p> <p>endeavor [1] - 66:13</p> <p>endeavors [1] - 58:12</p> <p>ended [1] - 96:14</p> <p>enforce [4] - 34:4, 36:6, 50:3, 118:6</p> <p>enforced [2] - 34:14, 38:24</p> <p>enforcement [16] - 55:4, 55:5, 55:8, 60:2, 63:23, 64:21, 88:22, 139:18, 139:21, 140:20, 141:10, 156:9, 156:23, 157:3, 246:6, 249:24</p> <p>enforcer [5] - 33:20, 33:24, 34:8, 34:9, 46:24</p> <p>enforcing [4] - 35:10, 35:16, 36:6, 39:23</p> <p>engage [7] - 7:1, 21:8, 21:10, 21:12, 21:13, 113:18, 129:23</p> <p>engine [1] - 235:5</p> <p>England [1] - 110:23</p> <p>Enjoy [1] - 111:10</p> <p>entails [1] - 4:9</p> <p>enter [1] - 157:19</p> <p>entered [4] - 43:19, 153:21, 154:2, 161:19</p> <p>enterprise [2] - 3:7, 239:12</p> <p>enters [4] - 6:2, 85:22, 151:8, 204:20</p> <p>entice [1] - 37:20</p> <p>entire [2] - 99:22, 232:24</p> <p>Entirely [1] - 56:1</p> <p>entitled [6] - 234:7, 235:11, 251:14, 251:20, 251:24, 251:25</p> <p>envelope [1] - 182:15</p> <p>equally [1] - 199:6</p> <p>equipment [2] - 48:1, 141:17</p> <p>eraser [1] - 182:13</p>
--	--	--	--	--

<p>Eric [5] - 96:5, 104:4, 104:25, 105:2</p> <p>errors [1] - 118:12</p> <p>escape [1] - 77:10</p> <p>Esquire [10] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:19, 1:20, 1:21, 1:22, 1:22</p> <p>essentially [7] - 3:5, 52:6, 116:1, 155:6, 155:14, 239:11, 239:13</p> <p>establish [3] - 120:6, 121:8, 121:16</p> <p>estimate [3] - 43:18, 147:4</p> <p>et [1] - 256:5</p> <p>evaluation [1] - 231:23</p> <p>evaporated [1] - 72:5</p> <p>evening [1] - 227:21</p> <p>event [4] - 117:22, 156:8, 228:8, 248:8</p> <p>eventually [2] - 65:24, 139:11</p> <p>evidence [25] - 2:8, 2:12, 4:16, 14:17, 14:18, 52:12, 83:7, 83:9, 112:21, 116:21, 128:12, 149:6, 155:9, 157:7, 166:21, 203:18, 227:12, 227:15, 238:9, 240:14, 244:23, 250:12, 251:8, 251:11</p> <p>evidentiary [1] - 113:24</p> <p>ex [1] - 37:13</p> <p>ex-girlfriends [1] - 37:13</p> <p>exact [2] - 97:22, 98:14</p> <p>Exactly [3] - 18:9, 69:20, 71:8</p> <p>exactly [6] - 31:24, 177:21, 198:13, 241:15, 248:16, 252:23</p> <p>exaggerated [1] - 2:21</p> <p>examination [27] - 74:6, 74:25, 77:13, 88:2, 90:18, 91:22, 94:7, 94:24, 98:4, 113:9, 113:10, 146:15, 230:15, 230:19, 230:23, 235:4, 235:12, 235:13, 236:2, 236:15, 239:10, 239:17, 240:20, 242:10, 252:21, 252:25, 253:7</p> <p>EXAMINATION [22] - 6:8, 33:15, 73:13, 76:22, 100:12, 108:17, 121:3, 136:7, 138:9, 146:4, 151:23, 255:5, 255:6, 255:7, 255:8, 255:9, 255:10, 255:13, 255:14,</p>	<p>255:15, 255:16, 255:17</p> <p>examinations [1] - 228:4</p> <p>examine [3] - 3:25, 239:23, 240:18</p> <p>examined [1] - 237:10</p> <p>example [6] - 82:16, 113:10, 122:16, 150:4, 173:4, 173:23</p> <p>Except [1] - 216:15</p> <p>except [5] - 5:17, 17:22, 65:20, 182:15, 239:6</p> <p>exceptions [2] - 155:15, 240:15</p> <p>exchange [3] - 69:11, 244:6, 253:4</p> <p>Excuse [5] - 76:2, 86:9, 102:25, 108:1, 117:17</p> <p>excuse [4] - 65:6, 85:8, 117:2, 249:24</p> <p>excused [8] - 84:18, 84:21, 111:2, 111:10, 111:12, 112:9, 203:20, 227:21</p> <p>Exhibit [10] - 25:16, 117:5, 153:3, 153:16, 153:24, 163:25, 165:23, 166:20, 171:3, 182:11</p> <p>exhibit [4] - 30:22, 30:24, 117:24, 225:9</p> <p>exhibits [1] - 225:6</p> <p>existence [1] - 3:7</p> <p>exit [2] - 87:23, 227:24</p> <p>exited [1] - 88:1</p> <p>exits [4] - 84:20, 84:22, 111:11, 227:23</p> <p>expect [3] - 111:5, 111:21, 136:5</p> <p>expecting [2] - 208:2, 219:17</p> <p>expeditiously [1] - 120:17</p> <p>explain [9] - 7:14, 50:10, 79:11, 86:8, 88:20, 89:22, 119:16, 123:14, 168:1</p> <p>explained [8] - 27:18, 80:3, 89:12, 89:20, 90:1, 215:25, 250:25</p> <p>explaining [4] - 28:24, 119:25, 212:6, 215:17</p> <p>explanation [1] - 121:5</p> <p>exposed [1] - 58:8</p> <p>expressed [4] - 67:9, 67:18, 113:18, 113:22</p> <p>expresses [1] - 157:25</p> <p>extent [5] - 3:25, 113:20, 159:10, 190:25, 245:16</p> <p>extract [1] - 80:15</p>	<p>extracted [2] - 79:6, 113:12</p> <p>extramarital [1] - 212:3</p> <p>extremely [1] - 232:23</p> <p>eyewitnesses [2] - 228:10, 238:12</p> <p style="text-align: center;">F</p> <p>face [5] - 39:15, 43:25, 88:25, 96:12</p> <p>facie [1] - 149:20</p> <p>facilities [1] - 58:2</p> <p>Facility [2] - 42:13, 57:7</p> <p>facility [7] - 42:13, 50:14, 56:1, 56:17, 56:22, 61:14, 66:7</p> <p>fact [41] - 3:21, 9:13, 13:21, 40:8, 40:24, 46:22, 59:18, 61:5, 61:8, 69:23, 72:21, 80:9, 81:3, 96:22, 99:21, 100:3, 105:13, 105:19, 114:23, 115:16, 116:11, 119:3, 119:19, 124:15, 125:2, 137:13, 138:24, 139:21, 141:10, 142:4, 143:1, 143:25, 144:10, 145:4, 145:15, 145:18, 147:12, 198:15, 201:9, 214:20, 244:12</p> <p>factor [2] - 2:13</p> <p>facts [4] - 60:3, 60:4, 114:4, 243:1</p> <p>factual [2] - 121:9, 237:5</p> <p>fail [1] - 243:11</p> <p>failed [2] - 109:1, 109:23</p> <p>failure [1] - 158:20</p> <p>fair [8] - 3:1, 3:19, 20:17, 27:23, 43:18, 67:19, 99:21, 239:24</p> <p>Fair [3] - 20:18, 21:14, 148:21</p> <p>fairly [4] - 82:19, 140:21, 219:18, 228:9</p> <p>fall [4] - 112:18, 144:20, 144:21, 144:24</p> <p>fallen [1] - 233:20</p> <p>falls [1] - 240:12</p> <p>familiar [1] - 40:5</p> <p>family [4] - 191:15, 191:16, 192:18, 192:19</p> <p>far [19] - 17:6, 19:15, 93:7, 108:12, 111:10, 116:16, 116:20, 127:13, 133:21, 138:15, 152:5, 176:23, 180:13, 203:19,</p>	<p>230:16, 231:15, 238:7, 241:24</p> <p>fashion [1] - 36:10</p> <p>fashioned [1] - 33:22</p> <p>fate [2] - 72:25</p> <p>fault [3] - 215:20, 216:1, 232:7</p> <p>faultiness [1] - 72:7</p> <p>faulting [1] - 240:9</p> <p>February [4] - 109:19, 128:18, 128:22, 129:24</p> <p>Federal [1] - 152:19</p> <p>federal [13] - 80:19, 98:13, 139:15, 152:18, 153:22, 154:6, 154:22, 156:22, 158:7, 159:3, 160:19, 161:18, 161:20</p> <p>federally [1] - 154:20</p> <p>fees [1] - 145:6</p> <p>felon [1] - 161:25</p> <p>felt [2] - 86:17, 92:9</p> <p>few [15] - 14:22, 17:22, 39:17, 49:22, 56:25, 100:14, 100:16, 109:15, 121:7, 121:9, 133:15, 146:13, 171:2, 172:1, 172:2</p> <p>Fife [1] - 6:21</p> <p>fifth [1] - 103:21</p> <p>Fight [1] - 47:8</p> <p>fight [7] - 39:14, 47:2, 47:4, 47:5, 47:8, 50:18, 50:20</p> <p>fighter [1] - 49:9</p> <p>fighting [6] - 31:17, 47:14, 47:16, 49:16, 49:17, 208:17</p> <p>fight [2] - 50:11</p> <p>figure [1] - 198:23</p> <p>figured [2] - 95:8, 95:9</p> <p>figuring [2] - 197:9, 198:19</p> <p>filed [2] - 117:6, 118:9</p> <p>final [2] - 96:9, 110:9</p> <p>finalize [2] - 2:6, 112:13</p> <p>finally [2] - 153:24, 212:17</p> <p>finance [2] - 75:25, 76:7</p> <p>fine [11] - 19:22, 25:9, 33:14, 71:14, 84:13, 85:5, 158:11, 231:24, 235:25, 239:3, 242:14</p> <p>finish [10] - 55:16, 68:20, 84:9, 228:1, 229:4, 234:16, 240:17, 240:24, 242:22, 242:24</p> <p>finished [7] - 22:18, 28:8, 28:9, 72:10, 236:11, 237:14, 242:25</p> <p>finishing [1] - 66:12</p>	<p>fire [1] - 189:1</p> <p>firearm [1] - 161:24</p> <p>firm [1] - 115:16</p> <p>firmed [1] - 114:15</p> <p>First [3] - 128:17, 158:14, 195:12</p> <p>first [60] - 8:25, 22:23, 22:24, 28:15, 28:16, 44:7, 53:18, 56:6, 57:17, 60:11, 61:5, 69:7, 75:12, 81:21, 90:1, 90:4, 97:9, 98:7, 98:11, 101:6, 107:3, 120:9, 128:17, 129:6, 130:7, 146:9, 152:16, 153:3, 154:2, 154:9, 155:14, 157:19, 157:20, 159:2, 162:23, 166:11, 167:11, 169:8, 172:10, 172:17, 184:13, 184:14, 186:20, 192:15, 206:4, 225:7, 228:10, 228:17, 230:19, 235:24, 238:25, 240:1, 240:3, 240:6, 240:20, 241:2, 241:4, 242:21</p> <p>fists [3] - 39:15, 47:9, 49:22</p> <p>Five [2] - 36:24, 140:22</p> <p>five [19] - 40:11, 44:21, 44:24, 45:3, 45:6, 45:9, 45:16, 46:6, 46:8, 46:10, 46:11, 46:17, 85:9, 87:17, 87:22, 158:3, 159:16, 224:15, 224:16</p> <p>Five-ten [1] - 36:24</p> <p>five-ten [1] - 40:11</p> <p>flagged [5] - 211:9, 211:10, 212:20, 212:21, 212:23</p> <p>flags [2] - 32:10, 94:9</p> <p>Flannery [4] - 1:19, 24:9, 25:4, 31:1</p> <p>flesh [1] - 150:13</p> <p>flexible [1] - 229:13</p> <p>floor [1] - 53:4</p> <p>flown [1] - 230:3</p> <p>focus [7] - 120:16, 126:2, 182:16, 220:10, 220:12, 238:3, 248:1</p> <p>focused [1] - 220:13</p> <p>folks [2] - 34:17, 35:24</p> <p>follow [3] - 59:8, 198:24, 224:9</p> <p>follow-up [1] - 59:8</p> <p>followed [1] - 159:15</p> <p>following [9] - 25:4, 28:4, 28:14, 56:13, 139:17, 140:20, 156:19, 251:17</p> <p>FOR [1] - 1:2</p>
--	--	---	---	--

<p>force [2] - 50:5, 238:18 foregoing [1] - 256:6 forever [1] - 234:25 forget [2] - 51:3, 228:6 Forgive [3] - 59:17, 136:18, 148:11 forgive [2] - 61:1, 120:5 fork [1] - 36:15 forth [3] - 4:6, 57:11, 159:12 forward [3] - 5:15, 57:15, 67:17 foundation [5] - 175:23, 179:4, 181:5, 181:10, 205:19 four [8] - 43:12, 44:24, 103:21, 122:7, 223:12, 224:15, 234:19, 242:11 Four [1] - 224:16 four-fifth [1] - 103:21 Fourth [2] - 246:15, 248:1 frank [1] - 3:9 frankly [4] - 2:21, 245:17, 247:17, 248:10 Fraser [3] - 153:15, 154:5, 156:5 free [2] - 3:17, 240:5 fresh [3] - 230:6, 231:24, 232:1 freshest [1] - 11:7 Friday [2] - 28:25, 227:19 friend [4] - 96:4, 210:7, 210:8, 210:21 friends [3] - 79:17, 197:13, 197:14 front [18] - 4:2, 4:7, 4:8, 4:16, 18:9, 33:1, 68:18, 131:7, 139:15, 153:4, 167:5, 168:2, 168:3, 177:24, 184:18, 199:19, 229:20, 240:7 fronted [4] - 177:24, 178:1, 184:20 fronts [1] - 65:18 fucking [1] - 212:1 fulfill [1] - 158:20 fulfilled [1] - 160:8 full [5] - 111:6, 142:19, 156:25, 169:2, 238:17 fuller [1] - 249:22 fully [4] - 5:3, 156:21, 156:24, 157:25 fund [1] - 145:6 furtherance [8] - 113:6, 115:19, 116:19, 119:24, 120:2, 120:7, 150:7, 150:8</p>	<p style="text-align: center;">G</p> <p>Gaffney [2] - 191:22, 191:23 gallery [1] - 111:13 game [2] - 40:5, 53:19 gangsta [1] - 102:5 gangster [1] - 102:21 Gap [1] - 66:8 garbage [3] - 87:24, 88:4, 88:10 GARDNER [1] - 1:8 Gardner [124] - 1:21, 2:7, 2:8, 2:11, 3:1, 3:4, 3:11, 3:19, 3:21, 4:11, 4:19, 73:21, 74:11, 74:15, 114:4, 115:24, 116:14, 116:15, 119:8, 119:14, 119:24, 121:12, 121:23, 123:4, 124:10, 124:22, 125:12, 125:15, 126:13, 127:6, 127:21, 128:2, 131:8, 133:4, 133:12, 133:16, 133:22, 134:2, 134:7, 134:8, 134:13, 135:17, 136:11, 136:21, 137:3, 138:14, 141:24, 142:13, 144:1, 144:18, 145:4, 147:13, 148:17, 148:22, 149:19, 150:4, 163:5, 163:12, 163:14, 163:19, 167:14, 167:19, 170:14, 171:16, 171:25, 178:13, 178:15, 178:20, 179:2, 179:8, 181:4, 181:8, 181:19, 181:20, 181:22, 182:4, 183:3, 184:5, 185:6, 185:19, 185:22, 186:13, 206:1, 206:15, 206:21, 215:4, 215:25, 216:8, 216:15, 216:20, 216:23, 217:3, 217:22, 218:5, 218:10, 218:14, 218:16, 218:19, 229:16, 230:8, 230:18, 235:6, 235:7, 240:12, 243:22, 244:2, 245:3, 245:23, 246:6, 246:11, 246:24, 247:4, 249:21, 249:24, 249:25, 250:7, 250:11, 251:11, 251:12, 251:18, 253:3 Gardner's [14] - 2:24, 3:8, 115:18, 116:23, 119:7, 231:7, 234:7, 243:23, 245:3, 246:23, 248:9, 250:23, 250:25, 251:3 gas [8] - 129:7, 146:17,</p>	<p>146:20, 190:8, 190:9, 194:5, 194:15, 196:24 gasoline [1] - 130:6 gather [1] - 3:13 General [1] - 58:19 general [5] - 15:17, 15:19, 50:11, 51:4, 244:23 generally [1] - 241:20 Genesis [1] - 63:4 gentleman [1] - 146:15 gentlemen [11] - 6:3, 14:17, 69:22, 84:15, 111:13, 122:9, 122:20, 122:23, 129:24, 151:9, 203:17 Gerard [1] - 1:19 ghost [1] - 204:13 Giganti [18] - 6:13, 6:19, 10:22, 15:10, 15:22, 16:1, 17:2, 19:8, 19:11, 20:19, 22:1, 22:4, 22:10, 22:17, 23:4, 23:20, 23:23, 24:2 girl [2] - 79:20, 233:14 girlfriend [2] - 43:24, 73:4 girlfriends [1] - 37:13 girls [5] - 142:23, 143:9, 143:11, 143:15, 143:18 given [18] - 13:1, 53:11, 57:6, 59:23, 78:10, 80:10, 81:7, 86:3, 153:9, 229:23, 230:16, 234:24, 238:21, 247:7, 247:8, 247:9, 247:14 glad [1] - 253:12 Glock [1] - 225:5 gloves [1] - 225:3 goal [3] - 18:23, 69:24, 80:14 God [1] - 73:15 gold [3] - 60:19, 95:14, 209:22 Goo [72] - 74:2, 126:12, 127:18, 129:12, 129:13, 140:9, 141:7, 142:21, 144:22, 163:15, 167:13, 171:15, 172:24, 173:5, 176:7, 176:11, 176:19, 177:1, 177:24, 178:1, 185:13, 185:22, 186:5, 186:7, 186:9, 186:24, 187:1, 187:20, 190:1, 190:6, 190:12, 190:14, 190:16, 190:24, 193:6, 193:9, 196:11, 197:18, 197:19, 198:1, 198:6, 198:9, 198:17, 199:7, 199:8, 199:10, 199:12,</p>	<p>199:15, 200:7, 205:17, 214:17, 215:4, 215:23, 217:13, 217:14, 217:16, 219:2, 220:20, 221:14, 222:9, 222:13, 222:14, 223:1, 223:4, 223:11, 224:7, 224:19, 225:23, 226:13, 227:7 Goo's [4] - 173:24, 175:7, 219:22, 226:14 Goose [44] - 119:10, 119:13, 119:18, 123:9, 123:12, 123:24, 130:24, 131:5, 133:5, 138:15, 138:21, 138:22, 138:24, 139:22, 140:10, 141:5, 147:8, 147:23, 195:7, 195:8, 195:17, 196:5, 196:7, 196:11, 196:13, 196:17, 196:22, 196:25, 197:2, 197:8, 197:17, 197:19, 197:25, 198:6, 198:9, 198:15, 198:19, 199:4, 205:18, 206:25, 207:2, 219:4, 220:5, 220:10 Goose's [1] - 123:10 goosey [1] - 242:12 government [35] - 2:14, 2:22, 16:12, 24:8, 30:22, 30:24, 83:7, 83:8, 85:6, 109:13, 116:21, 117:11, 148:4, 148:7, 148:14, 148:18, 149:12, 154:14, 229:23, 238:1, 238:13, 239:14, 241:11, 241:13, 241:14, 241:17, 241:22, 241:25, 242:5, 242:23, 242:24, 243:12, 249:18, 252:12, 253:19 Government [12] - 1:15, 111:12, 111:16, 151:11, 153:3, 153:16, 153:24, 163:25, 165:23, 166:20, 171:3, 182:11 Government's [1] - 25:16 GOVERNMENT'S [2] - 120:19, 151:17 government's [2] - 112:16, 113:14 graciousness [1] - 71:20 grade [3] - 152:6, 152:7, 152:8 grams [1] - 250:18 grand [12] - 32:20, 34:7, 80:19, 80:24, 81:7, 98:13, 98:16, 139:15, 142:4, 142:5, 143:8,</p>	<p>157:14 Grand [1] - 98:18 grandmother [1] - 171:7 grant [1] - 115:10 grass [1] - 233:17 Gray [2] - 122:3, 164:12 Great [1] - 25:18 great [1] - 2:19 greater [2] - 148:4, 149:6 greatest [1] - 235:5 Green [2] - 155:20, 222:19 grew [2] - 77:5, 122:11 grinder [2] - 236:20, 237:7 group [1] - 173:9 grow [1] - 152:3 guess [15] - 6:17, 7:13, 8:3, 20:4, 45:18, 45:19, 48:3, 64:21, 91:11, 150:16, 198:12, 210:13, 213:21, 214:11, 250:9 guilty [7] - 3:4, 3:9, 43:19, 152:24, 155:3, 157:19, 205:12 gun [74] - 39:19, 39:21, 39:22, 39:24, 40:13, 40:18, 49:18, 52:19, 52:20, 52:24, 131:14, 131:15, 131:16, 132:8, 132:9, 132:11, 132:14, 155:4, 158:7, 169:6, 169:8, 169:10, 169:19, 169:20, 169:22, 169:24, 170:1, 170:5, 170:7, 170:9, 170:12, 170:17, 173:11, 173:16, 173:18, 173:19, 173:21, 173:24, 174:6, 174:14, 174:19, 187:3, 187:4, 187:5, 187:6, 188:12, 188:19, 200:14, 200:23, 201:3, 201:6, 201:9, 201:12, 201:13, 201:15, 201:16, 201:17, 201:20, 201:22, 203:1, 204:25, 205:1, 205:3, 205:5, 205:6, 225:24, 226:4, 226:8, 226:12, 226:14, 227:1, 227:3, 227:5, 227:7 guns [14] - 40:9, 40:16, 96:5, 131:11, 131:12, 147:1, 169:18, 170:15, 173:11, 188:14, 225:3, 225:4, 225:11, 225:18 guy [23] - 37:9, 37:11, 40:21, 79:19, 95:8, 96:4, 104:4, 104:20, 119:10,</p>
---	---	--	--	--

139:22, 141:3, 141:5, 155:20, 179:12, 181:3, 187:12, 190:16, 191:19, 196:21, 207:3, 208:18, 211:11 guys [13] - 106:10, 173:9, 175:9, 176:14, 177:12, 179:8, 185:22, 191:3, 191:6, 192:16, 206:4, 226:4, 233:19	23:21, 23:24, 24:4, 28:7, 36:18, 37:15, 37:19, 37:22, 38:5, 44:19, 45:22, 49:25, 50:8, 52:7, 52:9, 54:14, 58:13, 60:17, 62:3, 67:13, 67:24, 70:16, 72:6, 72:16, 73:2, 73:5, 76:23, 82:24, 83:1, 83:4, 83:12, 83:23, 83:25, 84:2, 84:4, 84:6, 84:11, 85:5, 85:11, 85:15, 85:25, 100:11, 104:15, 108:14, 110:20, 110:24, 116:2, 117:15, 117:19, 118:9, 118:24, 119:8, 121:4, 122:4, 122:8, 123:2, 123:23, 124:14, 125:7, 126:23, 130:1, 130:5, 132:6, 135:1, 137:8, 141:20, 144:15, 145:1, 145:23, 151:13, 151:24, 169:17, 176:9, 186:19, 203:15, 204:7, 204:11, 204:22, 228:2, 228:9, 228:14, 228:16, 228:22, 229:1, 229:9, 239:3, 255:8, 255:13, 255:17 Harding's [3] - 147:7, 147:11, 232:15 HARRIS [1] - 1:7 Harris [116] - 1:18, 6:24, 7:17, 8:7, 8:14, 8:17, 9:5, 9:23, 10:9, 12:14, 13:1, 13:8, 13:9, 15:7, 15:15, 16:20, 17:7, 17:10, 17:15, 18:16, 19:11, 19:19, 20:3, 20:22, 21:7, 21:24, 21:25, 22:11, 23:9, 23:12, 23:15, 25:13, 26:2, 26:4, 26:22, 27:24, 30:4, 31:11, 31:17, 31:22, 31:24, 32:1, 32:23, 33:4, 33:8, 42:10, 46:15, 50:21, 51:3, 51:5, 51:10, 51:12, 51:14, 51:22, 52:15, 52:23, 52:25, 55:2, 56:6, 56:7, 61:25, 62:18, 65:2, 66:18, 74:8, 75:11, 79:6, 80:11, 80:15, 80:25, 81:2, 81:20, 82:5, 82:9, 86:3, 86:23, 88:3, 88:8, 88:13, 91:7, 92:16, 92:20, 93:1, 93:13, 93:25, 94:7, 94:20, 96:1, 96:3, 96:16, 97:5, 98:8, 98:11, 98:22, 99:1, 99:12, 99:17, 101:20, 105:8, 106:18, 107:1,	107:24, 108:3, 112:14, 112:18, 113:1, 113:4, 113:7, 113:11, 113:13, 113:16, 113:18, 114:1, 114:5, 148:20, 186:17 Harris's [5] - 27:8, 108:20, 108:23, 112:23, 113:20 Hasim [1] - 79:15 hat [1] - 237:22 head [4] - 94:19, 95:3, 95:20, 99:23 hear [26] - 7:25, 17:23, 17:25, 18:16, 23:15, 24:22, 28:18, 28:21, 28:22, 54:7, 59:8, 82:7, 82:8, 96:19, 96:20, 117:22, 118:7, 119:1, 125:6, 125:9, 132:21, 132:23, 133:2, 204:9, 214:21, 239:16 Hear [1] - 17:24 Heard [1] - 161:13 heard [45] - 5:3, 11:17, 11:21, 18:5, 19:19, 25:6, 31:8, 51:4, 51:5, 51:7, 51:9, 51:11, 51:15, 51:17, 61:5, 73:23, 73:25, 74:1, 74:2, 75:1, 91:19, 92:18, 93:12, 94:16, 97:4, 97:9, 99:11, 103:22, 111:9, 112:21, 114:7, 116:2, 118:25, 125:11, 148:5, 176:7, 176:11, 203:18, 214:22, 230:2, 234:10, 239:21, 241:15, 242:10, 249:18 hearing [14] - 17:17, 97:21, 107:3, 113:24, 118:25, 121:6, 148:6, 149:18, 231:17, 232:5, 237:7, 245:15, 245:17, 248:15 hearings [2] - 241:23, 242:2 hears [1] - 239:15 heavyweight [1] - 79:17 Heights [20] - 74:18, 75:6, 77:5, 77:8, 77:10, 77:16, 77:18, 92:12, 95:7, 104:6, 104:11, 104:14, 104:17, 105:21, 179:12, 179:17, 181:4, 181:16, 185:13, 222:25 held [1] - 250:12 help [16] - 5:13, 5:14, 5:15, 75:25, 76:11, 81:16, 142:3, 177:17, 191:9, 191:12, 197:9, 207:15, 213:4, 214:2,	214:3, 214:14 hereby [1] - 256:3 hereunto [1] - 256:9 heroin [10] - 64:11, 166:8, 168:22, 179:16, 181:12, 181:17, 185:7, 185:10, 185:17, 196:6 Heroin [1] - 178:3 herself [1] - 13:10 hesitant [1] - 109:8 hesitation [2] - 112:15, 112:20 hid [1] - 174:14 hidden [2] - 173:20, 173:21 hide [3] - 173:18, 173:19, 173:24 High [2] - 152:9, 152:10 high [4] - 64:21, 65:5, 66:16, 134:1 Highland [1] - 196:2 highway [2] - 247:8, 248:4 Hill [1] - 182:25 himself [3] - 157:2, 181:19, 218:6 hit [2] - 190:12, 190:18 hold [7] - 26:25, 27:3, 92:23, 113:23, 228:21, 249:14, 250:10 holding [1] - 174:19 holler [4] - 94:2, 94:5, 105:9, 105:11 Hollins [7] - 139:23, 139:25, 140:4, 141:6, 195:24, 196:3, 196:4 Holly [25] - 119:9, 121:12, 129:18, 133:4, 134:11, 135:15, 135:19, 135:21, 136:21, 137:3, 144:1, 144:19, 165:9, 165:12, 165:14, 177:17, 178:13, 181:14, 181:18, 197:23, 199:13, 199:16, 206:2, 206:9, 217:1 Holly's [4] - 131:8, 144:4, 165:19, 199:20 Home [2] - 197:1, 197:2 home [17] - 119:10, 124:4, 124:6, 124:15, 129:6, 130:7, 134:14, 140:9, 141:7, 145:15, 147:8, 147:12, 147:15, 147:21, 147:23, 194:9, 224:22 homicide [6] - 32:17, 52:2, 54:3, 136:24, 159:4, 202:9 Homicide [1] - 33:25 homicides [3] - 54:5,	78:6, 253:17 Honda [5] - 174:2, 174:3, 175:6, 209:22 honest [1] - 21:19 Honor [128] - 2:16, 4:22, 5:6, 5:8, 5:18, 6:10, 14:14, 15:5, 18:14, 24:2, 24:5, 24:11, 24:14, 25:1, 25:9, 25:17, 28:8, 30:23, 52:10, 76:20, 80:20, 82:24, 83:1, 83:5, 83:10, 83:12, 83:16, 83:20, 83:23, 83:25, 84:7, 84:12, 85:5, 86:1, 99:13, 100:5, 100:8, 100:11, 100:14, 111:1, 114:8, 115:5, 115:13, 116:2, 116:5, 117:15, 122:5, 122:7, 125:4, 126:20, 130:1, 136:4, 137:10, 141:20, 142:16, 143:3, 144:6, 146:1, 146:3, 146:6, 148:2, 148:8, 148:11, 149:22, 151:13, 155:9, 162:15, 163:12, 171:12, 171:17, 185:16, 186:2, 186:11, 186:16, 204:11, 204:23, 220:18, 225:11, 227:9, 228:3, 228:4, 228:9, 228:22, 229:9, 229:11, 229:22, 230:11, 230:22, 231:8, 231:14, 231:19, 231:21, 232:22, 233:9, 233:14, 234:2, 234:3, 235:1, 235:4, 235:24, 236:1, 237:4, 237:20, 237:25, 238:23, 239:3, 239:5, 239:21, 242:19, 243:11, 243:19, 245:25, 246:14, 246:19, 247:2, 247:17, 249:8, 249:11, 249:13, 250:4, 250:10, 251:20, 252:16, 253:13, 253:16, 254:2 Honor's [1] - 232:23 Honorable [1] - 1:13 hooked [2] - 129:12, 129:13 hope [3] - 84:9, 100:16, 161:1 hopefully [1] - 117:12 hospital [4] - 189:21, 189:23, 190:5, 190:20 hots [1] - 37:5 hour [6] - 14:10, 228:22, 228:23, 232:3, 241:18, 248:3 hours [3] - 61:17, 231:6, 234:20
--	--	---	---	--

<p>house [27] - 12:24, 30:9, 30:16, 40:12, 130:9, 130:10, 131:6, 131:8, 140:11, 170:4, 187:1, 187:9, 187:10, 187:12, 193:21, 194:8, 194:11, 197:4, 197:6, 199:19, 199:20, 206:2, 213:21, 214:14, 224:9, 229:20</p> <p>House [1] - 65:18</p> <p>hum [9] - 20:8, 27:17, 30:21, 49:10, 53:1, 86:7, 93:4, 95:12, 95:24</p> <p>humanly [1] - 3:19</p> <p>hundred [6] - 178:24, 178:25, 179:1, 179:7, 188:3, 213:18</p> <p>hungry [2] - 219:23, 219:24</p> <p>hurt [4] - 190:22, 221:18, 221:19, 241:20</p> <p>husher [1] - 112:2</p> <p>hustling [1] - 26:15</p>	<p>implicate [4] - 148:14, 148:19, 148:20, 250:18</p> <p>Implicate [1] - 149:11</p> <p>implicated [1] - 253:2</p> <p>implication [1] - 150:2</p> <p>importance [1] - 237:24</p> <p>important [4] - 3:7, 26:25, 229:15, 237:13</p> <p>impression [2] - 218:21, 218:22</p> <p>imprisonment [6] - 158:2, 158:3, 158:4, 158:11, 159:15, 160:14</p> <p>IN [1] - 1:1</p> <p>in-court [2] - 230:9, 231:16</p> <p>in-furtherance [1] - 120:7</p> <p>inappropriate [1] - 212:2</p> <p>incarcerated [8] - 33:20, 40:25, 42:16, 57:25, 58:2, 58:16, 72:21, 136:21</p> <p>incarceration [2] - 41:11, 73:1</p> <p>inch [2] - 5:13, 87:25</p> <p>include [1] - 244:11</p> <p>included [1] - 243:23</p> <p>including [2] - 16:13, 160:13</p> <p>Including [1] - 158:20</p> <p>incriminate [1] - 36:3</p> <p>incriminating [1] - 245:23</p> <p>indeed [4] - 2:13, 112:23, 113:9, 227:10</p> <p>INDEX [1] - 255:1</p> <p>indicate [2] - 162:11, 245:4</p> <p>indicated [6] - 2:18, 77:1, 81:12, 147:12, 253:4</p> <p>indicating [4] - 122:1, 162:13, 163:10, 164:12</p> <p>indication [1] - 115:18</p> <p>indictment [1] - 157:20</p> <p>individual [1] - 39:1</p> <p>individually [2] - 112:2, 176:16</p> <p>individuals [2] - 128:23, 144:5</p> <p>induced [1] - 52:24</p> <p>Indulge [1] - 70:12</p> <p>indulgence [4] - 58:23, 66:20, 73:11, 138:6</p> <p>infamous [2] - 252:13, 252:15</p> <p>inference [1] - 4:10</p> <p>inferences [1] - 112:22</p>	<p>influence [1] - 60:21</p> <p>inform [1] - 158:15</p> <p>informal [1] - 111:17</p> <p>information [25] - 32:22, 33:4, 33:8, 52:5, 54:22, 54:25, 55:7, 57:12, 57:15, 66:24, 67:17, 69:3, 69:11, 69:18, 69:24, 70:4, 70:7, 70:14, 71:1, 79:6, 95:19, 138:20, 157:1, 158:17, 159:7</p> <p>infrequent [1] - 34:14</p> <p>initial [2] - 77:23, 130:14</p> <p>inmates [8] - 47:17, 47:22, 48:6, 48:11, 53:10, 58:4, 58:11, 58:15</p> <p>inquire [2] - 130:1, 157:3</p> <p>inside [7] - 9:21, 47:13, 47:14, 47:15, 88:10, 106:6, 170:3</p> <p>insofar [1] - 186:13</p> <p>instances [1] - 139:9</p> <p>instead [3] - 30:10, 213:6, 220:22</p> <p>Institution [1] - 77:25</p> <p>instruct [4] - 4:4, 250:9, 251:7, 251:10</p> <p>instructed [1] - 244:13</p> <p>instruction [13] - 115:8, 149:9, 150:17, 244:9, 244:10, 244:15, 244:16, 244:17, 245:7, 249:14, 249:17, 249:22, 253:11</p> <p>instructions [3] - 86:3, 149:24, 244:24</p> <p>insure [2] - 3:1, 3:18</p> <p>intended [6] - 3:20, 119:20, 148:19, 239:11, 242:24</p> <p>intends [2] - 116:22, 148:14</p> <p>intent [1] - 4:18</p> <p>interest [1] - 236:10</p> <p>interested [5] - 15:3, 21:25, 22:12, 23:9, 23:15</p> <p>interference [1] - 18:10</p> <p>interrupt [2] - 21:10, 228:16</p> <p>interrupted [2] - 12:20, 241:7</p> <p>intervening [1] - 233:12</p> <p>interview [7] - 10:6, 61:6, 144:12, 249:25, 252:4, 252:7, 252:9</p> <p>interviewed [1] - 81:3</p> <p>interviewing [1] - 55:12</p> <p>Intrepid [2] - 222:15, 222:16</p>	<p>introduce [3] - 2:8, 8:21, 148:14</p> <p>introduces [1] - 148:18</p> <p>introduction [1] - 51:11</p> <p>invasion [14] - 119:10, 124:4, 124:6, 124:15, 140:9, 141:7, 145:16, 147:8, 147:12, 147:15, 147:21, 147:23, 197:1, 197:2</p> <p>investigation [2] - 63:11, 227:13</p> <p>inviting [1] - 85:1</p> <p>involve [3] - 36:7, 39:13, 124:18</p> <p>involved [35] - 6:22, 74:22, 75:2, 75:5, 82:20, 88:17, 89:5, 89:15, 119:9, 121:11, 122:22, 123:3, 123:6, 124:15, 124:21, 126:7, 126:18, 131:2, 131:4, 133:5, 135:7, 135:15, 135:17, 135:19, 136:13, 136:20, 137:2, 166:7, 185:20, 185:23, 188:5, 192:13, 217:10, 217:11, 220:16</p> <p>involvement [1] - 113:4</p> <p>involves [1] - 36:8</p> <p>involving [1] - 4:17</p> <p>issue [11] - 2:5, 63:3, 115:15, 116:13, 243:16, 247:5, 247:20, 247:22, 248:7, 248:11, 253:15</p> <p>issues [5] - 84:18, 229:12, 246:16, 247:6, 248:1</p> <p>itself [2] - 49:2, 248:15</p>	<p>jailhouse [1] - 54:7</p> <p>James [2] - 1:21, 155:20</p> <p>jammed [1] - 92:24</p> <p>January [13] - 15:14, 21:24, 24:6, 25:14, 29:3, 109:19, 117:2, 117:9, 128:18, 128:21, 129:24, 142:17, 144:10</p> <p>Jencks [1] - 117:25</p> <p>JFK [1] - 250:1</p> <p>JI [3] - 55:25, 56:14, 56:16</p> <p>Joan [2] - 153:15, 154:5</p> <p>job [1] - 242:21</p> <p>John [1] - 153:12</p> <p>Johnnycake [3] - 164:23, 164:24, 165:6</p> <p>join [3] - 2:25, 74:17, 111:15</p> <p>jointly [2] - 144:7, 144:8</p> <p>Jones [3] - 4:20, 147:16, 239:12</p> <p>Jones-Spence [2] - 4:20, 147:16</p> <p>Judge [26] - 1:13, 16:12, 59:5, 59:6, 61:3, 67:10, 67:14, 67:18, 68:9, 68:11, 78:8, 83:14, 85:15, 97:8, 97:14, 97:22, 97:23, 108:10, 118:9, 120:14, 161:9, 204:13, 204:15, 235:2, 236:23</p> <p>judge [12] - 43:23, 44:7, 57:18, 66:23, 69:15, 70:23, 71:10, 161:5, 161:6, 161:9, 161:10, 161:12</p> <p>judging [1] - 228:5</p> <p>judgment [1] - 243:1</p> <p>judgments [1] - 3:3</p> <p>Julius [1] - 77:13</p> <p>July [2] - 153:10, 154:10</p> <p>jumped [2] - 187:1, 187:20</p> <p>Junction [1] - 26:9</p> <p>June [5] - 116:11, 117:2, 136:22, 136:24, 137:3</p> <p>juries [2] - 142:5, 157:15</p> <p>jurors [3] - 2:2, 5:20, 198:13</p> <p>Jury [11] - 1:14, 6:2, 84:20, 85:22, 111:11, 112:12, 151:8, 203:23, 204:12, 204:20, 227:23</p> <p>jury [66] - 3:5, 3:6, 3:21,</p>
<p>I</p>				
<p>idea [18] - 9:5, 43:3, 48:22, 79:25, 89:18, 90:23, 106:19, 161:14, 167:16, 178:22, 195:15, 213:6, 213:9, 213:11, 213:13, 213:15, 214:9, 229:18</p> <p>identification [2] - 230:10, 231:16</p> <p>identified [7] - 13:10, 122:5, 128:19, 162:14, 163:11, 165:2, 193:3</p> <p>identify [3] - 165:4, 165:23, 196:21</p> <p>idle [3] - 112:18, 112:24, 114:23</p> <p>ignore [1] - 90:19</p> <p>ignoring [1] - 27:25</p> <p>Il [1] - 27:16</p> <p>ilk [1] - 53:20</p> <p>illegal [1] - 65:19</p> <p>imagination [1] - 231:15</p> <p>imagine [2] - 4:25, 227:25</p> <p>Imagine [1] - 251:21</p> <p>immediate [2] - 86:17, 123:7</p> <p>immediately [3] - 15:7, 119:15, 133:16</p> <p>impact [2] - 233:23, 234:5</p>				
			<p>J</p>	
			<p>Jackson [1] - 107:6</p> <p>Jail [3] - 55:25, 56:20, 56:23</p> <p>jail [43] - 34:14, 35:8, 35:25, 37:2, 40:12, 40:20, 42:7, 42:13, 46:22, 47:8, 47:11, 47:12, 47:14, 48:12, 48:24, 56:15, 58:10, 69:16, 69:22, 69:24, 70:1, 70:2, 70:4, 70:5, 70:8, 70:11, 70:14, 71:13, 72:22, 81:17, 93:14, 99:16, 99:19, 100:4, 100:18, 100:23, 119:15, 128:7, 133:16, 219:18</p>	

<p>4:1, 4:2, 4:5, 4:8, 4:11, 4:16, 5:4, 24:9, 32:20, 34:7, 42:10, 52:11, 68:18, 69:23, 80:19, 80:24, 81:7, 81:8, 81:16, 85:9, 85:14, 98:13, 98:16, 98:18, 104:17, 111:3, 111:4, 113:24, 114:3, 120:10, 121:6, 139:15, 142:4, 143:7, 143:8, 146:9, 148:7, 148:12, 149:23, 150:12, 150:18, 151:4, 151:9, 169:15, 186:12, 227:10, 227:21, 231:6, 233:23, 234:5, 239:15, 239:20, 239:25, 244:10, 244:12, 244:17, 249:7, 249:23, 251:7</p> <p>Jury's [2] - 84:18, 203:20</p> <p>jury's [5] - 111:10, 121:6, 230:6, 231:23, 233:11</p> <p>juxtaposing [1] - 71:9</p>	<p>94:18, 147:19, 207:16</p> <p>killing [5] - 89:16, 102:10, 102:13, 205:12, 214:11</p> <p>Killing [1] - 205:11</p> <p>kilo [2] - 175:17, 175:19</p> <p>kilos [1] - 176:12</p> <p>kind [35] - 5:23, 17:15, 33:25, 75:24, 79:7, 79:14, 82:14, 82:20, 86:3, 95:9, 132:9, 161:14, 161:22, 162:12, 170:9, 174:10, 174:23, 175:1, 183:3, 184:20, 188:10, 195:1, 196:4, 196:25, 200:4, 201:13, 201:20, 205:3, 209:21, 222:14, 222:16, 225:24, 226:8</p> <p>kinds [1] - 160:19</p> <p>Kippur [1] - 236:5</p> <p>knocking [1] - 106:19</p> <p>knowing [3] - 67:5, 86:21, 211:14</p> <p>knowledge [5] - 21:1, 112:25, 222:4, 245:5, 250:18</p> <p>known [18] - 33:20, 49:13, 49:16, 78:5, 121:17, 122:2, 122:9, 156:15, 163:23, 164:15, 185:13, 196:17, 198:3, 198:4, 198:6, 208:17</p> <p>Known [2] - 50:18, 50:20</p> <p>knows [2] - 121:17, 229:11</p> <p>Kombat [1] - 27:15</p> <p>Kratsis [3] - 34:24, 35:1, 35:2</p> <p>Kravitz [1] - 36:12</p> <p>KURLAND [26] - 4:22, 5:2, 73:9, 73:11, 73:14, 230:11, 230:13, 230:22, 231:8, 231:14, 231:18, 235:2, 235:4, 235:19, 235:23, 236:1, 236:9, 236:18, 236:22, 237:1, 237:4, 237:9, 237:19, 237:25, 240:23, 255:7</p> <p>Kurland [8] - 1:22, 5:1, 235:17, 235:18, 240:4, 240:13, 240:22, 246:10</p> <p>Kurland's [3] - 232:4, 235:17, 240:20</p>	<p>labeled [4] - 34:1, 34:2, 180:7, 182:24</p> <p>labels [1] - 117:24</p> <p>lack [1] - 138:3</p> <p>ladies [5] - 6:3, 14:17, 69:22, 84:14, 203:16</p> <p>Ladies [2] - 111:13, 151:9</p> <p>lady [2] - 228:15, 236:19</p> <p>lake [1] - 182:25</p> <p>Lane [14] - 135:24, 166:15, 166:16, 166:18, 166:22, 167:4, 167:12, 178:11, 178:18, 178:19, 178:23, 180:5, 199:23, 199:24</p> <p>language [1] - 113:20</p> <p>Lanvale [7] - 135:13, 170:24, 207:22, 207:23, 207:24, 210:10, 211:16</p> <p>lapse [1] - 12:5</p> <p>laptop [1] - 25:5</p> <p>largely [1] - 238:11</p> <p>larger [6] - 148:24, 149:1, 149:2, 149:21, 175:21, 175:25</p> <p>largest [1] - 175:12</p> <p>last [12] - 46:3, 56:12, 81:12, 100:17, 112:15, 137:15, 138:1, 146:8, 153:19, 184:13, 184:15, 192:8</p> <p>late [2] - 2:5, 81:21</p> <p>Late [1] - 97:7</p> <p>latest [1] - 236:9</p> <p>Laura [1] - 1:17</p> <p>Lauretta [5] - 135:13, 170:24, 171:5, 180:10, 189:18</p> <p>lavalire [1] - 180:3</p> <p>law [17] - 55:4, 55:5, 55:8, 60:2, 63:23, 64:20, 88:22, 139:18, 139:21, 140:20, 141:10, 156:9, 156:22, 157:2, 160:13, 246:6, 249:24</p> <p>LAWLOR [28] - 33:16, 52:14, 73:7, 108:18, 111:1, 120:14, 125:4, 136:8, 137:10, 137:12, 148:8, 148:11, 148:21, 149:11, 149:16, 149:22, 150:1, 150:10, 150:20, 150:23, 151:3, 186:2, 186:11, 217:20, 235:3, 255:6, 255:10, 255:14</p> <p>Lawlor [14] - 1:18, 38:8, 47:25, 72:10, 83:13, 83:24, 98:21, 99:15,</p>	<p>120:10, 137:9, 137:11, 240:5, 240:9, 242:9</p> <p>Lawlor's [2] - 234:25, 242:10</p> <p>laws [1] - 44:6</p> <p>lawyer [4] - 14:19, 142:3, 143:25, 220:4</p> <p>lawyer's [1] - 156:4</p> <p>lawyers [4] - 73:21, 76:11, 76:17, 156:5</p> <p>lead [4] - 81:5, 126:21, 127:4, 155:12</p> <p>leader [1] - 191:16</p> <p>Leading [1] - 99:8</p> <p>leading [4] - 137:3, 155:8, 202:19, 216:18</p> <p>leads [1] - 41:11</p> <p>learned [1] - 74:8</p> <p>learning [1] - 224:6</p> <p>least [8] - 29:3, 100:16, 107:25, 108:4, 123:4, 139:14, 221:24, 253:4</p> <p>leave [9] - 3:5, 84:16, 85:2, 85:9, 111:8, 111:16, 182:22, 203:17, 227:11</p> <p>leaves [1] - 111:16</p> <p>leaving [1] - 4:10</p> <p>led [2] - 147:15, 147:21</p> <p>left [10] - 6:11, 12:3, 55:23, 56:6, 69:6, 96:15, 127:25, 146:16, 218:12, 218:16</p> <p>legal [1] - 145:6</p> <p>legitimate [1] - 230:17</p> <p>less [7] - 45:11, 45:13, 46:7, 221:3, 228:22, 233:12, 246:3</p> <p>Less [1] - 228:23</p> <p>lessened [1] - 234:5</p> <p>lesser [1] - 190:25</p> <p>letter [30] - 2:4, 57:16, 57:18, 57:23, 59:4, 59:11, 67:9, 67:15, 68:9, 68:11, 69:8, 69:15, 70:6, 71:12, 78:7, 78:11, 83:13, 84:7, 94:15, 96:3, 97:15, 153:9, 154:14, 155:6, 155:13, 155:18, 155:22, 156:8, 160:4, 165:21</p> <p>letters [3] - 61:3, 66:23, 68:24</p> <p>Lewisburg [2] - 35:5, 35:7</p> <p>Lex [1] - 77:16</p> <p>Liberty [1] - 222:25</p> <p>lieu [1] - 115:9</p> <p>life [11] - 2:9, 35:5, 37:3, 40:25, 44:12, 45:21,</p>	<p>46:23, 67:23, 158:1, 159:14, 160:14</p> <p>Lift [1] - 37:8</p> <p>light [5] - 114:19, 114:20, 230:14, 230:24, 231:3</p> <p>likely [2] - 23:10, 84:10</p> <p>likewise [1] - 114:2</p> <p>limited [2] - 231:18, 231:20</p> <p>limiting [6] - 150:17, 244:9, 244:15, 249:14, 249:22, 253:11</p> <p>line [7] - 66:16, 112:19, 120:12, 123:12, 160:22, 160:25, 192:12</p> <p>Line [1] - 142:18</p> <p>lines [3] - 17:22, 157:9, 244:16</p> <p>linked [1] - 203:8</p> <p>liquor [4] - 130:19, 130:21, 130:22, 146:18</p> <p>listen [9] - 16:20, 16:23, 17:8, 18:3, 18:5, 23:14, 81:25, 88:23, 101:21</p> <p>listened [6] - 17:19, 18:20, 19:18, 20:14, 21:20, 28:17</p> <p>listening [1] - 88:21</p> <p>lists [1] - 160:20</p> <p>litigate [2] - 245:16, 245:20</p> <p>live [5] - 48:23, 183:20, 197:5, 199:22, 238:20</p> <p>lived [13] - 51:21, 123:24, 124:2, 171:6, 197:3, 197:9, 198:20, 214:4, 221:25, 222:2, 222:5, 224:4, 226:6</p> <p>livelihood [3] - 66:2, 72:18, 72:23</p> <p>living [3] - 222:20, 222:21, 236:19</p> <p>local [4] - 156:22, 230:1, 238:21, 243:9</p> <p>located [8] - 146:20, 152:10, 164:3, 165:6, 182:7, 194:16, 194:20, 199:18</p> <p>locations [5] - 170:22, 177:16, 179:14, 179:25, 227:15</p> <p>locked [34] - 31:11, 37:7, 71:15, 81:12, 93:20, 119:14, 124:22, 124:24, 125:2, 125:8, 125:12, 125:15, 125:25, 152:22, 154:13, 154:17, 154:18, 154:25, 193:15, 193:20, 193:22, 214:18,</p>
K				
<p>Keep [1] - 76:9</p> <p>keep [9] - 84:17, 101:4, 101:6, 101:11, 109:1, 151:6, 200:21, 203:19, 205:6</p> <p>keeping [1] - 116:24</p> <p>Kelly [1] - 229:25</p> <p>Kelsey [1] - 1:17</p> <p>Kenneth [2] - 35:13, 35:15</p> <p>kept [7] - 28:23, 91:15, 91:16, 91:18, 92:3, 93:16, 101:1</p> <p>key [6] - 127:25, 159:8, 175:13, 175:17, 218:12, 229:14</p> <p>keys [1] - 176:11</p> <p>kid [1] - 164:15</p> <p>kidding [1] - 228:4</p> <p>Kill [1] - 207:1</p> <p>kill [22] - 103:19, 192:22, 206:25, 207:2, 207:3, 207:9, 207:12, 209:8, 209:14, 212:7, 213:2, 213:4, 213:6, 213:23, 214:1, 214:9, 220:17, 220:24, 220:25, 221:6</p> <p>killed [10] - 18:17, 18:24, 19:2, 49:20, 79:17, 79:19, 89:14,</p>	L			
	<p>lab [1] - 235:8</p>			

<p>214:21, 214:22, 214:24, 215:1, 215:3, 215:4, 215:10, 215:17, 215:20, 216:1, 218:5, 226:16 lockup [1] - 75:11 Lombard [1] - 1:25 look [12] - 61:22, 68:1, 96:12, 132:8, 200:16, 201:6, 225:8, 226:5, 227:14, 232:10, 233:4 Look [2] - 70:23, 182:18 looked [4] - 116:16, 117:7, 178:11, 205:13 looking [6] - 14:11, 14:12, 67:6, 145:5, 225:25, 235:17 Looks [1] - 156:4 looks [2] - 30:23, 196:15 loose [1] - 63:8 loosey [1] - 242:12 loosey-goosey [1] - 242:12 loot [2] - 221:10, 221:13 lost [4] - 142:13, 145:2, 145:7, 145:12 Lost [2] - 145:1 low [5] - 17:7, 17:10, 17:15, 20:22, 25:7 lucky [1] - 228:1 lunch [5] - 85:6, 85:7, 85:8, 111:3, 111:10 luncheon [2] - 84:25, 85:1 lyric [1] - 103:13 lyrics [4] - 102:8, 102:20, 108:19, 108:23</p>	<p>97:18 man [14] - 44:6, 127:18, 127:19, 145:21, 162:6, 163:4, 164:5, 164:7, 164:17, 165:8, 207:11, 210:2, 210:6, 215:24 Man [2] - 216:22, 216:23 manage [1] - 242:21 management [1] - 242:8 managing [1] - 6:16 mandatory [1] - 158:3 Manhattan [2] - 177:9, 177:10 manifestly [1] - 230:18 mankind [3] - 67:7, 67:17, 68:2 manner [6] - 39:4, 230:17, 237:10, 238:3, 238:16, 256:8 map [4] - 179:24, 181:3, 182:21, 182:24 March [3] - 128:19, 128:22, 132:19 Marcus [1] - 47:8 Marijuana [1] - 183:5 marijuana [2] - 166:8, 168:22 mark [1] - 14:20 marked [6] - 83:18, 83:19, 163:25, 182:11, 208:23, 225:6 Marshals [1] - 112:4 marshals [2] - 85:3, 112:9 MARTIN [32] - 1:8, 5:18, 5:24, 6:9, 15:4, 16:16, 24:5, 24:8, 24:11, 24:14, 24:16, 24:21, 25:9, 25:12, 25:16, 25:19, 28:8, 28:20, 31:4, 80:20, 81:9, 82:21, 83:10, 83:16, 83:19, 89:7, 100:13, 108:16, 122:7, 204:13, 255:5, 255:9 Martin [124] - 1:19, 1:20, 6:7, 14:15, 15:3, 22:7, 24:10, 24:24, 25:11, 27:10, 40:23, 51:3, 54:16, 61:1, 64:2, 68:13, 71:19, 79:5, 80:6, 83:12, 90:19, 91:15, 91:22, 92:15, 108:24, 114:4, 115:25, 116:15, 119:9, 119:11, 119:16, 119:19, 120:1, 121:11, 121:19, 123:4, 124:21, 124:22, 124:24, 125:11, 126:18, 126:25, 127:5, 127:12,</p>	<p>128:7, 130:6, 131:8, 132:7, 133:7, 138:11, 138:13, 142:22, 143:2, 143:8, 145:6, 145:16, 145:18, 146:17, 148:22, 149:19, 150:4, 150:5, 162:7, 162:15, 162:17, 162:23, 163:16, 168:24, 169:10, 169:18, 170:11, 171:15, 171:24, 174:13, 174:25, 183:11, 183:20, 184:17, 184:18, 184:20, 185:4, 185:6, 185:20, 186:16, 186:17, 187:23, 194:2, 194:22, 196:23, 214:18, 242:16, 243:22, 243:24, 244:4, 244:5, 244:11, 244:23, 244:25, 245:1, 245:4, 245:23, 245:24, 249:12, 249:15, 249:25, 250:11, 250:13, 250:16, 250:18, 250:21, 251:4, 251:9, 251:13, 252:24, 252:25, 253:2, 253:4, 253:9 Martin's [6] - 25:5, 119:12, 245:2, 248:23, 251:18, 251:24 Mary [3] - 1:24, 256:3, 256:14 MARYLAND [1] - 1:2 Maryland [5] - 1:12, 1:25, 42:14, 61:15, 158:14 mate [1] - 80:15 material [1] - 116:16 materials [1] - 117:1 mates [1] - 58:6 matter [9] - 2:24, 3:4, 3:13, 109:3, 118:14, 119:3, 145:18, 256:4, 256:8 matters [2] - 117:23, 157:2 maximum [5] - 158:1, 158:2, 158:10, 159:14, 160:13 MB [1] - 84:2 MB-40D [2] - 30:23, 30:24 MB-42 [1] - 25:16 MB-51 [1] - 83:2 MB-52 [1] - 83:2 MB-54 [2] - 83:25, 84:3 McCaffity/Brown [3] - 84:4, 113:5, 253:17 McCaffity/Jones [1] - 253:17 McKean [5] - 182:8, 182:19, 182:23, 182:24,</p>	<p>183:4 MD-54 [1] - 84:1 mean [53] - 12:6, 18:18, 29:10, 45:23, 54:5, 55:6, 58:19, 65:18, 76:9, 76:14, 78:20, 79:1, 79:11, 82:3, 86:8, 88:21, 89:17, 94:12, 103:13, 110:2, 123:15, 123:17, 123:18, 126:24, 127:5, 129:14, 133:21, 139:25, 140:1, 140:3, 140:4, 144:23, 168:3, 187:10, 197:23, 201:1, 210:6, 217:12, 218:24, 219:24, 228:5, 229:12, 229:14, 230:3, 232:5, 233:3, 233:7, 241:5, 246:15, 246:16, 249:1, 250:5 meaning [4] - 89:14, 96:11, 126:11, 149:4 Meaning [1] - 176:18 means [7] - 3:24, 37:21, 39:8, 54:24, 168:1, 168:9, 198:13 meant [6] - 18:1, 26:14, 70:24, 128:14, 143:21, 243:24 measured [1] - 231:1 meet [22] - 8:17, 9:11, 12:19, 12:21, 13:18, 22:22, 26:4, 26:6, 26:8, 64:22, 64:23, 85:16, 91:12, 92:2, 92:3, 92:12, 162:6, 162:17, 164:13, 170:5, 211:8, 253:3 meeting [27] - 7:17, 9:13, 10:7, 14:9, 15:7, 15:20, 16:2, 21:7, 21:15, 27:19, 27:20, 28:3, 28:13, 28:23, 65:6, 66:17, 77:23, 86:24, 89:11, 90:4, 130:14, 131:10, 133:3, 139:17, 139:18, 196:24, 200:1 meetings [12] - 11:12, 14:5, 62:17, 62:18, 62:19, 63:22, 86:2, 86:22, 87:2, 88:13 member [4] - 55:4, 55:7, 116:17, 150:14 members [2] - 66:7, 114:5 Members [2] - 111:3, 227:10 memorandum [2] - 117:6, 140:19 memory [1] - 60:24 men [2] - 48:12, 48:14 mention [6] - 17:6,</p>	<p>17:10, 90:4, 94:25, 250:16, 253:21 mentioned [15] - 22:23, 32:15, 55:9, 55:11, 59:17, 71:1, 74:11, 74:15, 77:12, 77:13, 94:21, 146:16, 206:24, 227:15 mentioning [1] - 251:18 Mercedes [1] - 235:9 mere [1] - 114:23 mess [2] - 219:16, 219:17 met [27] - 8:7, 8:14, 10:21, 11:13, 11:16, 12:14, 12:17, 13:19, 28:2, 28:15, 75:11, 90:1, 103:11, 107:25, 108:3, 130:10, 130:15, 162:23, 163:19, 164:17, 164:19, 164:22, 165:1, 196:13, 212:18, 244:3, 244:5 metal [1] - 88:7 method [1] - 238:16 meting [1] - 15:20 Michael [4] - 1:16, 1:18, 191:22, 191:23 microphone [5] - 5:12, 151:7, 180:3, 204:19 Middle [3] - 164:23, 164:24, 165:6 middle [1] - 73:19 midst [1] - 242:2 might [32] - 7:1, 7:4, 12:5, 12:7, 15:16, 22:8, 23:8, 25:22, 27:18, 28:4, 32:10, 40:13, 60:21, 60:22, 78:5, 82:12, 82:15, 85:21, 89:15, 90:20, 92:14, 95:9, 111:18, 148:25, 197:5, 202:25, 207:9, 207:15, 209:8, 212:7, 213:4, 231:3 Might [1] - 22:2 mike [5] - 24:24, 89:25, 120:21, 146:22, 151:20 miles [1] - 248:3 milieu [1] - 113:21 millimeter [4] - 201:14, 205:4, 205:7, 205:15 mind [14] - 11:7, 43:18, 84:17, 90:12, 95:22, 103:25, 106:18, 116:25, 134:21, 203:19, 230:6, 232:1, 237:18, 242:7 minds [1] - 231:25 mine [1] - 232:7 Mines [1] - 213:8 minimum [1] - 158:3</p>
M				
<p>M-O-N-T-G-O-M-E-R-Y [2] - 120:24, 151:22 mad [2] - 96:13, 180:2 magnitude [1] - 229:15 main [1] - 35:20 Main [2] - 35:21, 222:23 mainstream [1] - 120:12 major [3] - 60:8, 60:10, 119:17 majority [5] - 16:6, 39:6, 40:14, 40:24, 46:23 male [3] - 54:19, 59:19, 60:24 Mallin [8] - 55:14, 55:18, 59:20, 69:4, 71:4, 71:6, 95:2 Mallini [2] - 71:3, 71:5 Mallins [2] - 94:25,</p>				

<p>minor ^[1] - 60:11</p> <p>minority ^[2] - 39:7, 49:24</p> <p>minute ^[14] - 25:10, 58:25, 84:18, 87:18, 87:22, 130:16, 136:5, 203:20, 244:14, 245:14, 245:22, 250:14, 250:20</p> <p>minutes ^[12] - 14:10, 24:11, 69:4, 84:11, 84:19, 85:10, 111:25, 121:7, 203:21, 228:24, 229:1, 242:17</p> <p>miraculously ^[1] - 107:18</p> <p>Miranda ^[7] - 246:21, 246:22, 247:2, 247:3, 247:7, 248:6, 252:8</p> <p>Mirandized ^[3] - 247:4, 247:12</p> <p>miss ^[1] - 73:19</p> <p>mistake ^[2] - 15:5, 125:25</p> <p>Mistrial ^[1] - 115:11</p> <p>mistrial ^[2] - 4:12, 115:10</p> <p>misunderstandings ^[1] - 118:13</p> <p>MITCHELL ^[1] - 1:7</p> <p>Mitchell ^[51] - 1:17, 32:23, 33:4, 33:8, 51:10, 51:15, 54:2, 54:9, 55:2, 56:8, 61:25, 74:8, 93:20, 97:5, 99:12, 99:18, 103:18, 108:22, 112:15, 113:19, 114:2, 114:5, 114:11, 114:22, 115:9, 119:20, 122:2, 125:2, 125:8, 136:14, 136:18, 137:5, 137:13, 137:16, 138:1, 138:13, 138:14, 148:15, 148:19, 150:9, 150:13, 164:5, 171:16, 186:14, 239:25, 241:3, 247:20, 249:24, 256:5</p> <p>Mitchell's ^[1] - 115:6</p> <p>modern ^[1] - 72:9</p> <p>modification ^[1] - 69:17</p> <p>Modified ^[1] - 62:13</p> <p>moment ^[10] - 70:12, 82:24, 84:6, 100:8, 116:3, 117:8, 117:20, 142:16, 148:10</p> <p>moments ^[1] - 133:15</p> <p>Momma ^[43] - 207:8, 207:11, 207:13, 207:15, 208:19, 209:4, 209:5, 209:6, 209:9, 209:10, 209:14, 210:20, 211:1, 211:2, 211:6, 211:11,</p>	<p>211:21, 211:25, 212:2, 212:7, 212:10, 212:13, 212:18, 213:7, 213:17, 213:25, 214:5, 214:7, 220:21, 220:22, 221:6, 221:11, 221:15, 221:16, 221:18, 221:23, 222:4, 222:6, 223:4, 223:14, 223:19, 223:25</p> <p>Momma's ^[4] - 208:21, 210:21, 211:18, 214:3</p> <p>Monday ^[1] - 243:13</p> <p>Mondays ^[1] - 243:15</p> <p>money ^[34] - 34:6, 36:8, 36:15, 37:20, 37:21, 39:1, 76:9, 94:6, 109:13, 109:24, 110:4, 124:3, 142:3, 145:5, 168:10, 170:7, 170:11, 176:15, 176:17, 176:23, 187:1, 187:9, 187:17, 188:16, 189:9, 189:10, 209:6, 211:21, 212:11, 213:12, 213:13, 213:15, 219:25, 220:1</p> <p>monitor ^[1] - 140:23</p> <p>monitors ^[1] - 141:1</p> <p>Monroe ^[10] - 135:13, 170:24, 171:5, 180:10, 189:18, 211:17, 211:18, 212:22, 223:5, 223:6</p> <p>Montgomery ^[91] - 4:1, 4:8, 4:14, 115:14, 115:19, 116:17, 117:25, 118:1, 118:17, 118:23, 119:1, 119:7, 119:8, 119:16, 119:25, 120:6, 120:18, 120:23, 120:25, 121:5, 121:9, 123:14, 128:17, 138:11, 140:8, 140:24, 141:3, 141:5, 141:6, 146:9, 146:13, 146:22, 149:18, 151:4, 151:14, 151:16, 151:21, 151:25, 152:12, 152:20, 153:4, 153:12, 153:17, 156:1, 156:16, 156:20, 157:4, 158:25, 159:8, 160:22, 161:4, 161:18, 162:3, 164:3, 165:6, 166:3, 171:6, 171:15, 173:7, 180:1, 180:7, 182:17, 183:1, 186:4, 193:16, 203:24, 204:16, 204:23, 205:17, 228:1, 228:7, 228:18, 229:21, 230:6, 231:11, 234:15, 234:17, 234:25, 236:15, 238:5, 238:18, 239:2, 239:10, 239:23, 240:12,</p>	<p>240:18, 240:25, 241:9, 242:22</p> <p>MONTGOMERY ^[3] - 120:19, 151:17, 255:12</p> <p>Montgomery's ^[9] - 115:24, 116:7, 116:13, 120:7, 150:18, 228:17, 230:19, 231:12, 232:14</p> <p>month ^[5] - 68:8, 97:17, 97:21, 99:22, 223:22</p> <p>months ^[19] - 46:18, 57:23, 58:4, 58:11, 64:6, 68:2, 68:7, 69:6, 81:13, 95:25, 97:8, 97:11, 98:4, 118:25, 121:10, 123:4, 128:25, 135:8, 223:22</p> <p>morning ^[25] - 2:3, 6:3, 6:10, 25:2, 33:17, 33:18, 73:15, 73:16, 76:24, 76:25, 81:19, 83:13, 84:14, 91:22, 92:16, 98:14, 118:2, 227:16, 227:22, 228:3, 228:11, 228:17, 236:14, 242:25, 243:17</p> <p>Mortal ^[1] - 27:15</p> <p>Mosher ^[5] - 211:17, 211:18, 212:22, 223:4, 223:6</p> <p>Most ^[5] - 39:3, 42:1, 42:2, 47:6, 94:13</p> <p>most ^[4] - 15:24, 48:14, 89:3, 229:15</p> <p>motion ^[1] - 246:24</p> <p>MOTION ^[1] - 255:13</p> <p>Motion ^[2] - 115:11, 115:12</p> <p>motions ^[6] - 231:17, 232:5, 237:7, 245:14, 245:17, 248:15</p> <p>motivation ^[1] - 3:8</p> <p>Mount ^[1] - 26:8</p> <p>mouth ^[1] - 150:10</p> <p>move ^[9] - 5:9, 5:13, 83:7, 83:9, 115:5, 115:6, 169:14, 186:2, 230:6</p> <p>Move ^[1] - 186:11</p> <p>moved ^[1] - 248:8</p> <p>movement ^[1] - 9:24</p> <p>movie ^[12] - 119:21, 119:23, 126:4, 135:2, 135:4, 142:24, 143:2, 143:5, 143:6, 143:18, 217:5, 217:7</p> <p>movies ^[7] - 126:5, 126:6, 135:6, 142:23, 143:9, 143:10, 143:14</p> <p>moving ^[1] - 12:7</p> <p>MR ^[300] - 2:16, 4:22, 5:2, 5:6, 5:18, 5:24, 6:9,</p>	<p>14:14, 15:4, 16:12, 16:16, 23:6, 23:21, 23:24, 24:4, 24:5, 24:8, 24:11, 24:14, 24:16, 24:21, 25:9, 25:12, 25:16, 25:19, 28:7, 28:8, 28:20, 31:4, 33:16, 36:18, 37:15, 37:19, 37:22, 38:5, 44:19, 45:22, 49:25, 50:8, 52:7, 52:9, 52:14, 54:14, 58:13, 60:17, 62:3, 67:13, 67:24, 70:16, 72:6, 72:16, 73:2, 73:5, 73:7, 73:9, 73:11, 73:14, 76:23, 80:20, 81:9, 82:21, 82:24, 83:1, 83:4, 83:10, 83:12, 83:16, 83:19, 83:23, 83:25, 84:2, 84:4, 84:6, 84:11, 85:5, 85:11, 85:15, 85:25, 89:7, 100:11, 100:13, 104:15, 108:14, 108:16, 108:18, 110:20, 110:24, 111:1, 115:13, 115:23, 116:2, 116:5, 116:9, 117:10, 117:15, 117:19, 117:22, 118:1, 118:9, 118:24, 119:8, 120:14, 121:4, 122:4, 122:7, 122:8, 123:2, 123:23, 124:14, 125:4, 125:7, 126:15, 126:20, 126:23, 127:3, 130:1, 130:5, 132:6, 132:12, 134:3, 135:1, 136:4, 136:8, 137:8, 137:10, 137:12, 138:10, 141:18, 141:20, 141:21, 144:5, 144:8, 144:9, 144:15, 145:1, 145:23, 146:1, 146:3, 146:5, 148:8, 148:11, 148:21, 149:11, 149:16, 149:22, 150:1, 150:10, 150:20, 150:23, 151:3, 151:13, 151:24, 155:8, 169:14, 169:17, 171:17, 175:23, 176:3, 176:9, 179:4, 181:5, 181:10, 184:8, 185:11, 185:16, 186:2, 186:11, 186:16, 186:19, 191:1, 197:11, 202:19, 203:15, 204:7, 204:11, 204:13, 204:22, 205:19, 205:20, 206:7, 216:18, 217:20, 217:24, 217:25, 218:25, 219:19, 220:2, 220:18, 226:21, 228:2, 228:9, 228:14, 228:16, 228:22, 229:1, 229:9, 229:11,</p>	<p>230:11, 230:13, 230:22, 231:8, 231:14, 231:18, 231:21, 232:4, 232:8, 232:17, 232:21, 233:1, 233:5, 233:7, 233:11, 233:17, 233:19, 233:24, 234:1, 234:6, 234:8, 234:10, 234:14, 234:18, 234:21, 235:1, 235:2, 235:3, 235:4, 235:19, 235:23, 236:1, 236:9, 236:18, 236:22, 237:1, 237:4, 237:9, 237:19, 237:25, 239:3, 239:5, 239:10, 240:23, 243:19, 244:1, 244:16, 244:22, 245:1, 245:8, 245:11, 245:16, 245:25, 246:3, 246:8, 246:12, 246:14, 246:18, 247:1, 247:5, 247:14, 247:17, 248:10, 248:13, 248:20, 248:25, 249:4, 249:8, 249:10, 250:3, 250:9, 250:17, 250:22, 250:24, 251:3, 251:6, 251:10, 251:19, 251:22, 252:5, 252:8, 252:11, 252:14, 252:16, 252:17, 252:18, 252:23, 253:1, 253:8, 253:13, 253:15, 254:2, 255:5, 255:6, 255:7, 255:8, 255:9, 255:10, 255:13, 255:14, 255:15, 255:16, 255:17</p> <p>MR.MARTIN ^[1] - 99:25</p> <p>MS ^[17] - 5:8, 5:15, 96:24, 99:8, 99:13, 100:5, 114:7, 114:11, 114:16, 114:19, 114:21, 115:5, 239:21, 241:1, 241:15, 242:19, 243:11</p> <p>mulls ^[1] - 239:25</p> <p>multiple ^[3] - 64:12, 72:1, 149:8</p> <p>Murder ^[3] - 93:22, 202:2, 215:2</p> <p>murder ^[38] - 2:9, 3:5, 3:8, 4:17, 4:20, 32:2, 53:22, 93:23, 94:8, 98:23, 99:17, 102:19, 103:4, 119:23, 132:21, 134:18, 135:6, 141:25, 152:16, 152:25, 154:3, 154:6, 155:1, 155:4, 156:13, 157:20, 158:15, 202:3, 202:5, 205:15, 218:20, 223:19, 233:14, 233:25, 234:5, 238:1, 238:10</p>
---	---	--	---	--

<p>Murdered ^[1] - 201:2 murdered ^[1] - 145:21 murders ^[9] - 3:22, 21:13, 49:7, 96:10, 113:5, 115:25, 132:23, 138:14, 217:16 Murray ^[2] - 204:13, 204:15 muscle ^[1] - 74:23 muscles ^[1] - 40:12 music ^[2] - 75:20, 76:7 must ^[5] - 38:3, 45:21, 127:15, 215:21 mysteriously ^[1] - 72:5</p>	<p>need ^[23] - 2:18, 22:7, 27:10, 43:9, 43:25, 44:9, 44:17, 50:5, 111:14, 123:24, 124:2, 131:16, 182:13, 200:22, 201:15, 201:16, 201:22, 205:5, 214:3, 224:3, 229:22, 236:12, 243:17 Needed ^[1] - 142:3 needed ^[15] - 40:18, 62:7, 71:12, 86:4, 131:14, 131:21, 138:21, 142:3, 191:11, 191:12, 200:13, 200:14, 202:17, 205:6, 221:23 negative ^[2] - 74:21, 74:22 negatively ^[1] - 150:5 neighborhood ^[2] - 105:25, 211:15 nervous ^[1] - 198:14 Never ^[7] - 16:25, 49:20, 73:24, 73:25, 75:7, 75:9, 83:19 never ^[42] - 12:19, 13:19, 16:23, 21:4, 28:2, 32:15, 40:12, 40:18, 51:15, 51:17, 61:21, 73:23, 73:25, 74:1, 74:2, 74:10, 74:15, 74:17, 75:1, 75:5, 75:8, 76:4, 76:10, 76:16, 89:1, 91:19, 94:21, 103:22, 105:11, 107:13, 107:14, 134:20, 136:13, 145:15, 184:4, 204:25, 217:18, 243:5, 247:11, 252:17, 253:9 nevertheless ^[1] - 201:6 New ^[11] - 122:16, 122:19, 171:16, 172:4, 173:1, 173:7, 173:11, 175:19, 176:1, 177:8, 244:2 newer ^[1] - 56:21 next ^[14] - 18:11, 85:17, 89:10, 97:17, 114:6, 115:13, 128:9, 151:11, 156:12, 158:6, 236:17, 239:23, 243:9, 243:13 nice ^[4] - 144:20, 144:21, 144:24, 229:6 nickname ^[4] - 74:2, 163:14, 165:19 Niedermeier ^[8] - 55:18, 55:19, 59:18, 95:2, 97:18, 246:20, 247:18, 247:19 Niedermeier's ^[1] -</p>	<p>241:8 night ^[3] - 142:24, 199:16, 200:6 nine ^[10] - 57:23, 58:4, 58:10, 68:2, 68:7, 68:8, 97:8, 97:11, 117:14, 175:20 Ninth ^[1] - 152:6 ninth ^[2] - 152:7, 152:8 NO ^[1] - 1:6 Nobody ^[1] - 35:23 normal ^[1] - 235:12 NORTHERN ^[1] - 1:2 northwest ^[1] - 171:10 nose ^[5] - 101:1, 101:4, 101:6, 101:11, 109:1 Note ^[1] - 140:7 note ^[6] - 70:21, 84:16, 111:8, 203:17, 227:11, 229:22 noted ^[6] - 105:6, 122:6, 162:16, 163:13, 225:13, 240:15 notes ^[9] - 11:10, 14:11, 15:6, 15:10, 15:13, 16:11, 16:17, 25:20, 25:24 Nothing ^[4] - 60:13, 65:19, 148:2, 161:3 nothing ^[14] - 26:12, 26:18, 60:10, 100:20, 108:22, 115:3, 136:19, 147:22, 155:16, 161:3, 186:22, 242:16, 251:17 notice ^[1] - 66:6 notion ^[3] - 67:9, 67:18, 67:22 notwithstanding ^[4] - 46:22, 61:8, 61:21, 69:23 November ^[16] - 12:21, 29:2, 30:4, 30:5, 30:13, 32:21, 33:1, 80:19, 92:16, 98:14, 98:18, 105:7, 107:18, 107:19, 108:12 number ^[14] - 13:4, 13:6, 27:6, 30:23, 41:16, 41:18, 43:19, 48:12, 83:22, 105:8, 107:24, 108:3, 148:23, 150:23 numerous ^[1] - 77:2</p>	<p>objected ^[9] - 116:15, 243:24, 244:7, 248:18, 248:24, 249:8, 249:9, 249:13, 253:7 objecting ^[2] - 245:12, 249:11 objection ^[23] - 2:15, 24:1, 24:19, 50:9, 72:8, 83:10, 83:15, 83:16, 150:3, 150:6, 150:11, 150:12, 150:25, 185:16, 185:18, 229:22, 243:17, 244:8, 244:17, 245:24, 248:18, 251:22, 251:23 Objection ^[73] - 23:6, 23:21, 23:24, 24:4, 28:7, 36:18, 37:15, 37:19, 37:22, 38:5, 44:19, 45:22, 49:25, 50:8, 52:7, 52:9, 54:14, 58:13, 62:3, 67:13, 67:24, 70:16, 72:6, 72:16, 73:2, 73:5, 80:20, 81:9, 82:21, 89:7, 96:24, 99:8, 99:13, 99:25, 100:5, 104:15, 108:14, 110:20, 110:24, 125:4, 126:15, 126:20, 127:3, 132:12, 134:3, 145:23, 155:8, 169:14, 171:17, 175:23, 176:3, 179:4, 181:5, 181:10, 184:8, 185:11, 186:2, 191:1, 197:11, 202:19, 205:19, 205:20, 206:7, 216:18, 217:20, 217:24, 217:25, 218:25, 219:19, 220:2, 220:18, 226:21 objections ^[2] - 2:11, 2:14 obligations ^[2] - 158:21, 160:9 observes ^[1] - 229:20 obvious ^[2] - 116:21, 244:7 Obviously ^[2] - 111:21, 249:17 obviously ^[5] - 4:9, 51:21, 236:12, 248:8, 249:19 occasion ^[12] - 12:17, 37:17, 49:24, 77:9, 109:10, 109:17, 140:12, 142:12, 188:19, 190:20, 191:18, 209:24 occasions ^[15] - 7:10, 11:23, 12:1, 12:15, 14:7, 14:22, 15:2, 29:4, 30:6, 38:25, 43:14, 109:11, 124:7, 147:6, 189:13 occur ^[2] - 2:20, 209:19</p>	<p>occurred ^[2] - 15:20, 57:20 October ^[19] - 1:11, 6:12, 8:25, 9:2, 10:7, 11:13, 14:5, 16:8, 16:11, 16:17, 32:20, 77:24, 80:4, 81:4, 97:17, 98:10, 98:12, 100:23, 256:5 odd ^[2] - 9:23, 9:24 OF ^[3] - 1:2, 1:5, 1:11 offer ^[8] - 7:4, 25:8, 44:3, 69:11, 69:13, 70:13, 116:22, 201:3 offered ^[3] - 28:24, 68:24, 221:5 offering ^[2] - 69:16, 70:7 Office ^[4] - 88:11, 117:3, 144:12, 156:25 officer ^[9] - 9:6, 9:9, 9:13, 41:16, 62:21, 63:17, 71:2, 107:5, 246:6 officers ^[8] - 9:25, 29:12, 55:19, 60:2, 66:17, 86:19, 157:3, 238:8 official ^[1] - 256:7 Official ^[1] - 256:15 often ^[4] - 38:9, 53:6, 64:23, 224:10 old ^[8] - 36:19, 36:21, 152:1, 162:22, 164:19, 165:11, 169:22, 172:8 older ^[6] - 56:20, 162:25, 163:1, 163:2, 167:19, 167:21 ON ^[1] - 255:13 Once ^[2] - 53:7, 220:16 once ^[9] - 29:7, 64:14, 64:24, 89:11, 107:25, 108:4, 108:5, 142:10, 220:16 One ^[8] - 20:9, 117:5, 144:16, 158:1, 167:6, 168:25, 173:15, 241:1 one ^[85] - 3:22, 7:11, 7:13, 9:24, 19:24, 22:24, 24:12, 28:18, 30:8, 36:3, 41:16, 43:16, 52:18, 59:25, 61:9, 66:22, 67:18, 70:12, 70:18, 73:11, 73:21, 74:6, 76:18, 81:21, 81:22, 82:24, 86:16, 87:14, 92:10, 92:15, 92:16, 95:1, 95:2, 97:25, 100:8, 102:10, 102:13, 102:24, 103:1, 103:18, 103:20, 105:6, 107:11, 107:15, 109:17, 116:17, 117:8,</p>
N				
<p>N-28 ^[1] - 30:22 N-40 ^[1] - 24:5 Nah ^[2] - 32:8, 142:9 name ^[51] - 13:1, 54:18, 55:9, 59:19, 59:25, 60:4, 60:10, 60:24, 73:17, 90:16, 94:18, 94:21, 94:25, 95:3, 95:9, 95:22, 103:25, 106:12, 106:13, 106:17, 120:22, 123:7, 123:10, 125:25, 134:20, 143:23, 151:20, 153:6, 161:12, 162:7, 163:5, 164:5, 164:7, 164:17, 165:8, 181:3, 184:13, 184:14, 184:15, 191:19, 191:21, 192:8, 195:21, 208:21, 211:18, 221:21, 244:2, 248:23, 251:18, 251:24 named ^[15] - 12:24, 60:9, 104:4, 104:20, 104:25, 139:22, 141:3, 141:5, 155:20, 171:2, 177:16, 191:9, 207:3, 207:8, 208:18 namely ^[2] - 160:4, 192:19 names ^[4] - 34:21, 35:23, 132:22, 177:12 narcotics ^[5] - 71:2, 110:5, 122:17, 122:19, 127:24 nature ^[2] - 76:3, 229:24 near ^[4] - 93:5, 179:12, 184:3, 184:4 nearly ^[2] - 117:13, 249:14 necessary ^[6] - 4:23, 4:25, 83:4, 113:23, 114:4, 227:20</p>				
O				
		<p>oath ^[3] - 6:6, 54:2, 68:17 obeying ^[1] - 41:8 object ^[3] - 14:14, 137:8, 253:24</p>		

<p>117:20, 127:25, 131:22, 139:14, 147:11, 147:19, 148:10, 148:25, 150:14, 153:19, 171:21, 171:22, 172:23, 173:16, 176:20, 183:20, 184:3, 184:10, 188:19, 188:25, 191:3, 199:4, 199:16, 207:7, 216:8, 221:16, 221:24, 222:6, 224:8, 224:21, 225:18, 230:4, 232:22, 238:4, 240:19, 242:22, 247:12</p> <p>one's [1] - 112:3</p> <p>ones [1] - 7:7</p> <p>online [1] - 227:14</p> <p>open [4] - 4:10, 84:17, 116:25, 203:19</p> <p>operated [1] - 195:23</p> <p>operation [3] - 76:7, 82:20, 91:4</p> <p>opportunity [10] - 31:21, 32:2, 32:12, 111:18, 111:20, 111:22, 112:1, 168:9, 230:25, 253:24</p> <p>opposed [2] - 72:14, 237:15</p> <p>oral [2] - 252:5, 252:6</p> <p>order [11] - 43:8, 44:6, 44:9, 44:17, 46:14, 62:6, 70:7, 123:24, 146:6, 232:21, 240:8</p> <p>ordered [1] - 63:16</p> <p>orders [1] - 229:15</p> <p>organization [2] - 74:17, 75:6</p> <p>Organization [1] - 74:18</p> <p>original [2] - 33:25, 71:12</p> <p>originally [3] - 54:17, 89:18, 143:20</p> <p>ought [1] - 231:6</p> <p>ounce [4] - 167:18, 168:4, 168:7, 168:13</p> <p>outcome [1] - 144:4</p> <p>outline [1] - 78:10</p> <p>outside [6] - 9:20, 89:12, 99:6, 106:6, 113:24, 121:6</p> <p>Outside [1] - 47:15</p> <p>overheard [1] - 94:25</p> <p>overnight [2] - 2:20, 232:2</p> <p>Overruled [34] - 36:20, 37:23, 52:8, 80:21, 81:10, 82:23, 89:8, 96:25, 99:9, 100:6, 108:15, 125:5, 126:16,</p>	<p>132:13, 137:9, 171:18, 176:8, 179:6, 181:6, 181:11, 184:9, 185:12, 191:2, 197:12, 202:20, 205:21, 206:8, 216:19, 218:1, 219:1, 219:20, 220:3, 220:19, 226:22</p> <p>overruled [3] - 50:9, 185:18, 244:8</p> <p>overwhelm [1] - 57:14</p> <p>owe [2] - 36:13, 212:10</p> <p>owed [3] - 40:15, 209:6, 211:21</p> <p>owes [1] - 36:8</p> <p>own [6] - 4:13, 49:12, 52:16, 52:21, 113:1, 212:13</p>	<p>parking [2] - 2:3, 6:4</p> <p>Parole [18] - 9:3, 9:20, 10:8, 10:21, 12:5, 18:11, 20:1, 22:23, 28:15, 65:1, 87:23, 88:1, 88:5, 88:9, 90:5, 92:10, 106:2, 106:6</p> <p>parole [7] - 2:9, 41:6, 41:9, 41:15, 41:24, 78:22, 158:4</p> <p>parse [1] - 149:24</p> <p>part [42] - 15:24, 37:2, 56:14, 56:16, 56:20, 56:23, 62:20, 72:14, 80:14, 81:21, 89:3, 89:10, 113:7, 116:16, 124:1, 126:9, 129:5, 144:18, 145:8, 145:9, 145:12, 149:2, 149:19, 149:20, 150:9, 171:8, 179:20, 198:21, 198:23, 199:1, 199:2, 199:10, 206:4, 207:23, 221:23, 224:8, 238:14, 239:12, 251:21</p> <p>participate [2] - 141:24, 145:5</p> <p>participated [2] - 145:15, 147:13</p> <p>participating [1] - 142:13</p> <p>particular [12] - 5:17, 12:11, 14:24, 20:13, 25:24, 27:20, 79:5, 144:18, 166:14, 229:24, 234:1, 244:18</p> <p>particularly [3] - 229:12, 230:24, 231:3</p> <p>passage [1] - 143:3</p> <p>passed [2] - 146:24, 147:18</p> <p>Passenger [1] - 200:9</p> <p>passing [1] - 92:11</p> <p>past [2] - 84:8, 87:22</p> <p>patience [1] - 151:11</p> <p>patrolling [1] - 12:4</p> <p>Paul [4] - 1:19, 34:24, 35:1, 35:2</p> <p>Pause [7] - 58:24, 66:21, 73:12, 100:10, 111:23, 171:14, 235:22</p> <p>pay [10] - 76:11, 76:17, 134:21, 168:10, 207:9, 209:8, 220:4, 220:25, 221:1, 239:17</p> <p>payment [1] - 220:23</p> <p>pays [1] - 92:11</p> <p>Payson [2] - 135:13, 170:25</p> <p>penalty [2] - 158:1, 158:2</p>	<p>pending [1] - 159:22</p> <p>people [59] - 8:18, 8:21, 9:17, 9:20, 18:10, 18:11, 22:1, 22:12, 23:9, 23:16, 25:1, 34:2, 34:6, 40:14, 47:6, 49:22, 76:17, 79:19, 88:17, 88:21, 89:4, 89:14, 89:16, 92:13, 93:6, 93:9, 93:11, 94:13, 96:14, 103:19, 106:20, 113:21, 124:12, 128:19, 139:6, 139:10, 141:16, 144:13, 156:10, 165:1, 172:25, 173:2, 177:12, 188:9, 188:10, 189:12, 191:4, 191:7, 191:9, 197:17, 198:3, 198:4, 198:7, 201:2, 230:1, 239:13, 239:15</p> <p>people's [1] - 88:23</p> <p>per [1] - 248:3</p> <p>percentage [1] - 39:4</p> <p>perfect [3] - 32:12, 32:14, 106:2</p> <p>perfectly [1] - 3:8</p> <p>performer [1] - 75:13</p> <p>perhaps [4] - 68:22, 132:22, 228:3, 238:9</p> <p>Perhaps [3] - 87:19, 114:16, 228:5</p> <p>period [9] - 29:2, 45:6, 45:15, 71:24, 108:8, 121:10, 122:25, 177:2, 177:6</p> <p>permission [2] - 146:7, 146:11</p> <p>permit [2] - 2:7, 81:24</p> <p>permitted [2] - 112:23, 249:2</p> <p>perpendicular [1] - 248:4</p> <p>person [9] - 13:1, 33:24, 60:4, 82:4, 89:12, 90:13, 90:14, 94:18, 96:9</p> <p>personal [2] - 15:7, 236:6</p> <p>personally [6] - 8:14, 11:14, 11:16, 12:14, 13:19, 230:2</p> <p>persons [1] - 122:16</p> <p>PH-22 [1] - 166:23</p> <p>PH-40 [1] - 164:1</p> <p>PH-47 [1] - 171:3</p> <p>PH-49 [1] - 182:12</p> <p>PH-66 [1] - 166:20</p> <p>PH-69 [1] - 196:21</p> <p>PH-70 [1] - 165:4</p> <p>phone [35] - 13:4, 13:6, 13:20, 13:22, 14:2, 15:14, 21:4, 21:6, 21:17,</p>	<p>21:20, 27:6, 29:6, 29:7, 30:10, 30:12, 30:14, 30:15, 30:18, 32:4, 32:6, 32:7, 62:19, 88:12, 88:23, 92:15, 94:8, 94:14, 108:3, 108:7, 126:1, 127:15, 215:22, 243:11</p> <p>Phone [1] - 21:15</p> <p>phonetic [1] - 186:25</p> <p>phony [1] - 116:1</p> <p>photo [5] - 59:23, 61:22, 78:3, 78:16, 253:18</p> <p>photos [3] - 253:18, 253:20, 253:22</p> <p>phrase [2] - 94:10, 127:22</p> <p>phrases [1] - 92:17</p> <p>Physical [2] - 39:9, 39:12</p> <p>physical [3] - 39:11, 39:13, 50:5</p> <p>physically [2] - 52:20, 128:14</p> <p>pick [5] - 207:21, 208:3, 223:1, 223:4, 223:10</p> <p>picked [3] - 61:14, 127:12, 207:19</p> <p>picking [1] - 242:9</p> <p>picture [3] - 164:1, 167:3, 208:23</p> <p>piece [5] - 110:10, 110:22, 229:24, 234:1, 235:1</p> <p>pieces [1] - 42:17</p> <p>pills [2] - 168:24, 169:2</p> <p>pin [1] - 137:18</p> <p>pistol [2] - 188:25, 189:1</p> <p>place [17] - 5:17, 8:19, 32:16, 42:10, 44:7, 48:17, 49:2, 50:12, 104:14, 105:7, 113:14, 152:15, 152:17, 166:14, 173:23, 174:5, 241:4</p> <p>placed [3] - 7:7, 7:11, 7:19</p> <p>plan [14] - 91:25, 128:16, 133:5, 144:18, 145:5, 195:11, 196:23, 199:10, 206:24, 207:2, 207:3, 207:6, 220:14, 220:17</p> <p>planned [2] - 147:8, 147:22</p> <p>Planning [2] - 123:20</p> <p>planning [7] - 124:18, 131:2, 131:4, 137:2, 203:12, 219:4, 253:22</p>
--	--	--	--	--

<p>plans [8] - 91:1, 119:11, 127:5, 128:9, 131:2, 138:12, 220:8, 228:11</p> <p>plastic [1] - 225:11</p> <p>Play [2] - 27:8, 27:15</p> <p>play [8] - 5:18, 5:19, 24:9, 24:18, 87:1, 228:24, 229:3, 242:16</p> <p>played [2] - 31:3, 92:15</p> <p>playing [5] - 24:20, 27:8, 27:15, 30:22, 233:17</p> <p>plea [11] - 3:9, 43:11, 43:19, 153:21, 154:2, 154:23, 156:13, 156:15, 160:16, 161:3, 161:15</p> <p>plead [2] - 3:4, 158:7</p> <p>pleading [4] - 118:9, 118:12, 155:3, 159:2</p> <p>pleas [1] - 157:19</p> <p>pleasant [1] - 227:21</p> <p>pled [2] - 152:24, 205:12</p> <p>plus [1] - 160:14</p> <p>pockets [8] - 75:24, 76:9, 127:16, 127:17, 127:22, 215:23, 215:24, 216:11</p> <p>Point [1] - 141:4</p> <p>point [20] - 4:24, 11:7, 44:5, 66:14, 91:9, 95:1, 115:13, 121:21, 121:25, 150:13, 162:11, 163:9, 198:12, 203:14, 220:8, 238:15, 240:13, 240:17, 242:20, 248:16</p> <p>pointed [1] - 80:6</p> <p>pointing [1] - 180:6</p> <p>points [1] - 241:1</p> <p>police [5] - 29:12, 54:18, 61:15, 139:2, 238:8</p> <p>polite [1] - 108:25</p> <p>politely [1] - 39:1</p> <p>pool [2] - 176:15, 176:23</p> <p>pooled [1] - 176:17</p> <p>Poppi [3] - 244:2, 244:5, 253:3</p> <p>position [8] - 114:21, 114:22, 118:19, 237:12, 240:3, 240:6, 240:19, 242:22</p> <p>possessed [1] - 161:24</p> <p>possession [1] - 200:24</p> <p>possibilities [1] - 78:21</p> <p>possible [4] - 3:19, 16:14, 99:11, 158:11</p> <p>possibly [3] - 230:21, 237:18, 239:24</p>	<p>Post [1] - 252:8</p> <p>pounding [1] - 43:25</p> <p>powder [2] - 181:22, 181:25</p> <p>practice [2] - 4:3, 120:13</p> <p>preceding [3] - 44:22, 45:4, 135:8</p> <p>predicament [1] - 44:10</p> <p>predicates [1] - 150:15</p> <p>prejudice [1] - 230:8</p> <p>prejudiced [1] - 237:17</p> <p>prejudicial [2] - 230:18, 230:21</p> <p>preliminarily [3] - 113:25, 114:14, 118:18</p> <p>preliminary [5] - 115:3, 115:18, 116:12, 118:5, 118:20</p> <p>premarked [1] - 83:17</p> <p>preparation [2] - 118:11, 217:4</p> <p>prepared [2] - 2:6, 140:20</p> <p>preponderance [1] - 112:21</p> <p>prescient [1] - 62:2</p> <p>presence [3] - 60:3, 113:24, 121:6</p> <p>present [16] - 52:21, 85:4, 112:3, 112:12, 134:8, 134:11, 177:5, 186:8, 186:9, 186:10, 186:14, 203:23, 216:24, 244:6, 253:3</p> <p>presided [1] - 243:6</p> <p>pressed [4] - 127:15, 215:21, 216:3, 216:4</p> <p>presumably [1] - 168:15</p> <p>pretrial [4] - 42:13, 241:23, 241:25, 242:5</p> <p>pretty [10] - 6:4, 8:10, 18:6, 31:5, 37:9, 38:3, 116:21, 231:24, 232:6, 233:12</p> <p>Pretty [2] - 37:11, 209:18</p> <p>prevented [2] - 32:10, 67:5</p> <p>preview [1] - 230:23</p> <p>previously [3] - 4:1, 4:9, 247:14</p> <p>prima [1] - 149:20</p> <p>primarily [1] - 149:13</p> <p>Princely [3] - 140:9, 140:10, 141:7</p> <p>principal [1] - 115:23</p> <p>Prison [1] - 66:9</p> <p>prison [14] - 6:12,</p>	<p>31:22, 31:24, 47:6, 47:16, 49:16, 66:7, 68:15, 68:19, 94:16, 96:10, 101:24, 103:23, 160:13</p> <p>pristine [1] - 246:21</p> <p>pro [1] - 69:25</p> <p>Probation [19] - 9:3, 9:20, 10:8, 10:21, 12:5, 18:12, 20:1, 22:23, 28:15, 65:1, 87:24, 88:1, 88:6, 88:9, 88:11, 90:5, 92:10, 106:2, 106:6</p> <p>probation [26] - 9:6, 9:9, 9:13, 41:6, 41:9, 41:15, 41:23, 62:12, 62:13, 62:15, 62:20, 63:14, 63:16, 78:22, 107:3, 107:5, 107:10, 109:3, 109:24, 119:15, 125:18, 154:19, 159:16, 159:22, 160:1, 193:21</p> <p>probative [2] - 149:6</p> <p>problem [14] - 2:3, 17:17, 62:24, 72:14, 89:16, 115:8, 119:17, 150:9, 232:25, 233:3, 241:6, 243:3, 243:4, 243:5</p> <p>problems [3] - 28:24, 241:9, 244:8</p> <p>procedural [1] - 235:8</p> <p>proceed [4] - 85:17, 85:23, 128:6, 148:7</p> <p>proceeded [1] - 87:23</p> <p>proceeding [3] - 4:4, 111:15, 146:7</p> <p>Proceedings [9] - 2:1, 58:24, 66:21, 73:12, 100:10, 111:23, 171:14, 235:22, 254:5</p> <p>proceedings [4] - 4:6, 4:17, 256:4, 256:7</p> <p>process [2] - 21:16, 213:5</p> <p>produce [1] - 241:23</p> <p>producer [1] - 75:17</p> <p>professional [2] - 3:2, 3:3</p> <p>proffer [11] - 24:17, 112:16, 153:9, 154:13, 155:6, 155:12, 155:18, 155:22, 156:23, 160:3, 230:2</p> <p>proffers [1] - 117:14</p> <p>profit [1] - 168:15</p> <p>Program [2] - 152:19, 241:10</p> <p>progressing [1] - 141:19</p>	<p>progression [1] - 235:12</p> <p>prohibiting [1] - 4:7</p> <p>projector [1] - 225:7</p> <p>promised [2] - 160:4, 161:6</p> <p>promises [1] - 160:3</p> <p>pronounce [1] - 73:17</p> <p>proper [1] - 251:8</p> <p>properly [3] - 38:8, 247:3, 247:4</p> <p>proposal [1] - 213:7</p> <p>propose [1] - 250:10</p> <p>proposed [5] - 116:14, 209:13, 245:7, 249:17, 253:11</p> <p>proposition [1] - 48:23</p> <p>prosecuted [2] - 144:1, 159:3</p> <p>prosecution [1] - 160:18</p> <p>prosecutors [3] - 71:20, 97:25, 155:19</p> <p>protect [1] - 105:17</p> <p>Protection [2] - 152:19, 241:10</p> <p>prove [1] - 149:13</p> <p>proven [1] - 149:5</p> <p>provide [9] - 34:23, 41:18, 54:21, 55:20, 67:16, 82:14, 91:12, 155:14, 156:18</p> <p>provided [9] - 54:24, 55:7, 55:15, 59:18, 60:23, 66:7, 72:1, 110:4, 117:5</p> <p>provides [4] - 157:6, 157:8, 157:9, 158:6</p> <p>providing [4] - 42:4, 69:23, 70:3, 156:25</p> <p>provision [2] - 141:4, 159:8</p> <p>provisions [2] - 159:21, 160:7</p> <p>Pulaski [10] - 139:22, 139:25, 140:4, 141:6, 170:24, 177:20, 195:24, 196:2, 196:3, 196:4</p> <p>pull [1] - 24:24</p> <p>pulled [1] - 212:24</p> <p>purchase [3] - 122:16, 122:19, 126:4</p> <p>purchased [1] - 176:1</p> <p>purchasing [1] - 110:5</p> <p>purportedly [4] - 42:10, 57:20, 66:24, 148:15</p> <p>purpose [5] - 204:24, 205:3, 205:8, 231:18, 231:20</p> <p>purposes [1] - 202:18</p>	<p>pursuant [5] - 158:21, 158:23, 159:11, 160:25, 161:1</p> <p>push [1] - 27:10</p> <p>pushed [1] - 84:8</p> <p>put [39] - 4:22, 5:20, 5:22, 25:1, 25:23, 30:15, 44:7, 52:6, 54:4, 62:13, 63:14, 75:24, 87:15, 88:10, 95:20, 107:9, 110:10, 117:24, 128:12, 148:13, 156:22, 198:12, 199:15, 205:17, 219:15, 225:7, 228:10, 228:17, 233:1, 233:21, 235:9, 237:16, 237:19, 238:1, 249:2, 249:5, 249:10, 252:24, 253:5</p> <p>Put [3] - 38:8, 54:5, 219:7</p> <p>putting [3] - 237:11, 237:12, 252:20</p> <p>PYNE [41] - 243:19, 244:1, 244:16, 244:22, 245:1, 245:8, 245:11, 245:16, 245:25, 246:3, 246:8, 246:12, 246:18, 247:1, 247:5, 247:14, 247:17, 248:10, 248:13, 248:20, 249:4, 249:8, 249:10, 250:3, 250:9, 250:17, 250:22, 250:24, 251:3, 251:6, 251:10, 251:19, 251:22, 252:5, 252:8, 252:11, 252:17, 252:23, 253:1, 253:8, 253:13</p> <p>Pyne [3] - 1:21, 243:16, 251:17</p>
Q				
<p>quantities [2] - 175:21, 175:25</p> <p>queen [1] - 110:22</p> <p>Queensbury [1] - 47:8</p> <p>questioned [2] - 51:2, 252:19</p> <p>questioning [1] - 117:3</p> <p>questions [25] - 14:16, 14:18, 15:1, 15:18, 38:8, 52:12, 68:13, 72:11, 73:7, 73:20, 74:6, 75:10, 76:19, 87:16, 100:11, 100:14, 121:9, 136:3, 139:6, 139:11, 146:13, 147:7, 147:12, 156:22, 181:2</p> <p>quick [1] - 228:10</p> <p>quickly [3] - 182:22,</p>				

228:6, 234:13 quid [1] - 69:25 quirk [1] - 72:25 quite [4] - 14:19, 196:19, 245:17, 248:10 Quite [1] - 247:17 quo [1] - 69:25 quote [4] - 31:11, 79:7, 113:12, 113:17 quote-unquote [1] - 113:12	128:24, 131:4, 143:21, 145:19, 148:25, 215:23, 216:15, 229:18, 241:5 reason [18] - 29:19, 29:25, 69:17, 92:6, 119:24, 125:24, 142:13, 144:18, 145:4, 145:8, 145:9, 145:10, 145:12, 213:1, 234:10, 240:24, 241:24, 242:18 reasonable [2] - 111:5, 229:7 reasons [13] - 2:18, 91:18, 91:19, 92:3, 92:4, 105:16, 105:19, 107:15, 113:22, 148:5 rec [3] - 53:5, 53:6, 53:10 receipt [1] - 126:5 receipts [1] - 142:25 receive [5] - 3:19, 159:10, 159:14, 244:17, 244:24 Received [1] - 24:8 received [5] - 2:5, 66:24, 109:12, 111:17, 117:23 receives [1] - 3:1 receptacle [2] - 174:10, 174:18 recess [15] - 2:20, 84:8, 84:14, 84:18, 84:19, 84:25, 85:1, 112:8, 112:10, 203:16, 203:20, 232:2, 239:1, 254:4 Recess [3] - 85:13, 112:11, 203:22 recognize [7] - 153:9, 153:17, 166:21, 166:23, 182:16, 225:14, 226:2 recollection [8] - 46:11, 115:16, 115:17, 137:19, 246:17, 246:22, 247:24, 247:25 recommend [2] - 159:14, 160:11 recommendation [2] - 159:9, 159:18 record [26] - 2:18, 4:23, 18:15, 25:4, 81:20, 111:24, 112:17, 114:21, 120:22, 122:4, 143:1, 149:17, 150:13, 151:20, 157:11, 162:14, 163:11, 237:5, 237:11, 237:16, 240:8, 241:16, 243:2, 243:18, 244:9, 244:12 recorded [9] - 18:16, 23:12, 80:6, 82:8, 127:15, 215:22, 216:7,	252:4, 256:3 recorder [4] - 10:12, 69:6, 80:8, 82:6 recorders [2] - 13:15, 13:16 recording [12] - 7:7, 7:11, 18:7, 21:17, 81:22, 87:9, 87:11, 87:13, 98:7, 98:11, 110:14, 216:21 recordings [4] - 21:20, 46:15, 72:2, 86:22 recovery [1] - 238:9 RECROSS [4] - 100:12, 108:17, 255:9, 255:10 recross [1] - 85:17 recruit [2] - 113:10, 113:11 red [4] - 32:10, 94:9, 167:5, 167:9 redacted [5] - 251:15, 251:20, 251:21, 251:24, 252:1 REDIRECT [2] - 76:22, 255:8 Redirect [2] - 73:8, 76:21 redirect [1] - 236:15 reduce [1] - 81:16 reduction [1] - 68:25 refer [1] - 4:4 reference [3] - 40:24, 142:16, 243:25 referenced [1] - 108:19 references [4] - 243:23, 244:4, 245:4, 251:13 referred [2] - 249:12, 252:17 referring [8] - 78:7, 115:21, 115:23, 119:6, 144:22, 175:14, 222:7, 241:20 reflect [6] - 25:4, 111:24, 122:4, 162:14, 163:11, 242:12 reflection [1] - 2:20 refrain [3] - 62:21, 63:19, 64:3 refrained [1] - 56:10 refraining [1] - 41:20 refusal [2] - 2:24, 3:14 refusing [1] - 3:12 regard [1] - 240:14 regarded [1] - 192:19 regarding [8] - 2:5, 71:1, 89:11, 108:24, 116:13, 116:14, 159:9, 196:24 regards [5] - 243:19, 244:1, 244:24, 247:21, 251:11	regressing [1] - 141:18 regular [1] - 63:22 rehab [2] - 63:6, 63:9 rejoin [1] - 120:1 relates [2] - 102:16, 102:18 relationship [5] - 116:7, 116:10, 211:24, 212:3, 240:10 relative [1] - 171:6 relayed [2] - 42:9, 148:16 release [8] - 62:7, 67:10, 69:12, 69:13, 70:25, 71:21, 97:23, 159:16 released [10] - 41:5, 62:9, 62:14, 63:11, 71:16, 71:18, 79:2, 79:4, 98:1 relevant [1] - 157:7 reluctant [1] - 230:22 reluctantly [1] - 229:17 relying [1] - 31:1 remain [1] - 6:6 remainder [1] - 65:4 remained [2] - 57:25, 58:2 remarks [2] - 244:11, 244:13 remember [47] - 6:11, 17:10, 19:21, 19:22, 19:23, 35:24, 55:5, 60:7, 60:15, 60:19, 79:16, 86:14, 91:19, 92:20, 93:14, 94:3, 94:9, 107:3, 126:8, 127:11, 129:1, 129:3, 130:25, 133:24, 143:23, 146:14, 154:17, 169:2, 170:11, 184:10, 186:21, 186:22, 188:2, 188:18, 189:10, 191:18, 221:2, 221:3, 246:5, 246:9, 246:11, 246:14, 248:5, 248:6, 248:7, 248:25 remembered [1] - 98:14 Remove [1] - 225:9 remove [1] - 23:3 rep [5] - 46:24, 49:9, 49:12, 50:16, 51:4 repeat [4] - 68:21, 68:23, 238:5, 238:6 Repeat [1] - 136:23 Repeated [1] - 150:23 repeated [1] - 94:1 repeatedly [1] - 52:11 Rephrase [3] - 50:1, 126:21, 134:5 report [15] - 9:23, 22:3,	22:11, 23:23, 24:3, 30:13, 41:16, 62:21, 63:17, 107:18, 107:21, 249:3, 249:4, 249:6, 252:20 reported [2] - 107:11, 107:21 Reported [1] - 1:23 Reporter [1] - 256:15 reporter [1] - 180:2 REPORTER'S [1] - 256:1 reporting [3] - 42:4, 97:9, 107:11 represent [4] - 22:9, 22:10, 73:20, 138:11 representation [2] - 20:17, 46:7 representations [1] - 118:13 representatives [1] - 154:15 represented [2] - 25:11, 25:12 represents [1] - 156:21 reputation [5] - 40:21, 47:13, 54:1, 113:1, 113:2 request [5] - 27:14, 111:18, 150:23, 200:15, 231:1 requested [2] - 149:9, 221:5 require [3] - 160:23, 241:22, 241:25 required [1] - 41:15 requires [1] - 238:3 reside [2] - 35:4, 35:16 residing [2] - 35:10, 130:8 resolve [1] - 115:8 resort [1] - 39:8 respect [6] - 115:15, 151:1, 230:16, 240:13, 240:21, 253:23 respected [1] - 3:2 respectively [1] - 114:2 respond [3] - 3:12, 118:10, 200:15 responded [2] - 19:4, 156:21 responding [1] - 92:23 response [13] - 2:21, 27:8, 27:14, 112:7, 114:7, 114:9, 114:13, 114:15, 114:17, 114:25, 115:1, 147:7, 147:11 responses [1] - 14:25 responsibility [3] - 3:1, 3:18, 246:4 responsive [1] - 149:25
R				
rack [1] - 44:3 Rahman [1] - 79:15 Rahman's [1] - 98:24 raid [1] - 193:21 raise [1] - 168:10 raised [1] - 94:9 raising [1] - 240:2 ran [5] - 130:6, 194:22, 197:16, 197:19, 197:25 Randallstown [14] - 122:14, 131:6, 140:9, 141:7, 164:4, 183:13, 183:14, 184:23, 184:24, 197:7, 208:11, 223:15, 223:16 Randallstown/Park [2] - 74:18, 75:6 rap [7] - 31:14, 96:20, 96:23, 101:23, 102:5, 103:23, 108:19 rather [7] - 80:25, 145:6, 228:1, 232:19, 232:21, 235:23, 253:17 ratified [1] - 113:19 rationalize [1] - 67:22 Ravens [1] - 53:19 re [2] - 41:11, 73:1 re-incarceration [2] - 41:11, 73:1 reach [1] - 214:13 read [9] - 23:2, 23:4, 70:18, 70:22, 87:15, 94:15, 118:21, 155:10, 253:1 ready [6] - 6:5, 6:7, 85:23, 114:6, 151:11, 204:21 reaffirming [1] - 112:16 real [10] - 17:7, 47:4, 47:5, 123:10, 130:17, 182:22, 191:21, 208:21, 211:18, 247:22 realize [1] - 248:10 really [15] - 28:18, 29:5, 57:9, 60:7, 66:1, 127:18,				

<p>rest [3] - 70:15, 79:2, 101:13</p> <p>result [3] - 192:2, 192:16, 216:6</p> <p>resulted [2] - 44:13, 73:1</p> <p>resume [2] - 65:24, 119:18</p> <p>resumed [6] - 66:2, 66:14, 72:13, 72:18, 72:22, 73:4</p> <p>Retaliation [2] - 193:12, 193:13</p> <p>retrieved [1] - 87:25</p> <p>returns [1] - 5:9</p> <p>reveal [1] - 156:9</p> <p>reviewed [2] - 2:5, 115:17</p> <p>revolver [2] - 225:25, 237:22</p> <p>RHODES [17] - 5:8, 5:15, 96:24, 99:8, 99:13, 100:5, 114:7, 114:11, 114:16, 114:19, 114:21, 115:5, 239:21, 241:1, 241:15, 242:19, 243:11</p> <p>Rhodes [3] - 1:17, 114:25, 240:3</p> <p>ribs [1] - 39:17</p> <p>RICO [2] - 149:13, 149:14</p> <p>rid [1] - 131:23</p> <p>ride [7] - 27:21, 28:24, 28:25, 29:4, 29:8, 29:10, 92:2</p> <p>rises [1] - 240:12</p> <p>risk [1] - 4:9</p> <p>road [2] - 166:25, 167:1</p> <p>roar [1] - 25:7</p> <p>rob [25] - 27:14, 28:17, 76:11, 76:17, 89:18, 90:12, 119:11, 123:20, 128:16, 133:5, 136:13, 202:14, 206:25, 207:2, 207:15, 207:16, 213:4, 213:6, 213:11, 213:22, 213:25, 214:9, 220:17, 221:8</p> <p>robbed [5] - 89:13, 89:21, 187:1, 188:9, 188:16</p> <p>robberies [10] - 121:13, 122:22, 124:6, 124:18, 136:14, 185:20, 185:23, 188:5, 188:20, 189:4</p> <p>robbery [54] - 26:23, 27:4, 28:23, 90:20, 90:21, 91:7, 91:17, 91:25, 113:6, 119:9, 119:10, 119:18, 123:3,</p>	<p>123:6, 123:7, 123:15, 123:16, 123:20, 123:25, 124:4, 124:16, 126:18, 128:10, 130:24, 134:18, 136:24, 138:15, 138:21, 141:25, 145:16, 147:8, 147:21, 152:18, 186:20, 186:21, 187:6, 188:2, 189:7, 193:21, 195:11, 195:15, 196:25, 197:10, 198:20, 202:16, 203:12, 217:4, 218:11, 218:20, 219:3, 219:13, 220:5, 221:13, 223:19</p> <p>robbery/murder [1] - 127:14</p> <p>robbing [17] - 22:1, 22:12, 22:21, 23:9, 23:16, 75:20, 75:23, 76:6, 91:10, 106:20, 195:7, 195:8, 196:25, 198:3, 198:4, 198:7</p> <p>Robert [1] - 1:16</p> <p>Robinson [1] - 107:7</p> <p>role [1] - 63:23</p> <p>rolled [2] - 130:16, 189:20</p> <p>room [1] - 190:6</p> <p>Room [1] - 1:24</p> <p>roughly [2] - 80:9, 152:15</p> <p>Roughly [2] - 43:4, 47:24</p> <p>RPR [1] - 1:24</p> <p>rub [1] - 39:10</p> <p>rubber [1] - 225:3</p> <p>Rule [1] - 252:3</p> <p>rule [2] - 113:25, 118:15</p> <p>ruled [4] - 114:14, 118:18, 239:5, 245:18</p> <p>ruling [27] - 2:6, 2:7, 2:17, 4:15, 4:21, 112:13, 114:10, 114:14, 114:19, 114:20, 115:1, 115:3, 116:11, 116:12, 116:20, 118:5, 118:20, 150:17, 230:14, 234:4, 236:3, 240:5, 246:3, 246:4, 247:21, 247:22</p> <p>rulings [1] - 3:20</p> <p>run [4] - 156:20, 159:25, 180:16, 194:1</p> <p>runs [4] - 139:22, 139:25, 141:6, 180:16</p>	<p>S-42 [2] - 225:6, 226:2</p> <p>S-59 [1] - 165:23</p> <p>S-60 [1] - 208:23</p> <p>sadly [1] - 48:14</p> <p>safe [2] - 173:10, 225:11</p> <p>safety [1] - 82:15</p> <p>Sakellaris [3] - 153:12, 154:6, 156:5</p> <p>salesmanship [1] - 50:4</p> <p>salient [2] - 55:15, 55:20</p> <p>sample [2] - 107:13, 107:16</p> <p>samples [2] - 41:18, 107:9</p> <p>sarcasm [2] - 120:11, 242:12</p> <p>sat [6] - 5:15, 10:24, 17:16, 69:4, 139:5, 139:10</p> <p>satisfaction [1] - 159:13</p> <p>satisfied [4] - 148:3, 148:4, 148:6, 149:17</p> <p>satisfy [1] - 109:23</p> <p>Savoy [3] - 183:15, 183:16, 183:20</p> <p>saw [17] - 9:25, 13:10, 20:11, 29:21, 69:2, 80:4, 128:21, 130:7, 137:16, 138:1, 154:23, 187:17, 213:19, 243:8, 253:4</p> <p>scene [2] - 253:18, 253:22</p> <p>schedule [1] - 242:4</p> <p>scheduled [1] - 28:3</p> <p>scheduling [3] - 28:13, 229:12, 236:4</p> <p>scheme [9] - 119:10, 120:2, 121:12, 123:3, 123:6, 123:7, 123:15, 123:16, 126:18</p> <p>schemes [1] - 119:18</p> <p>School [3] - 164:1, 164:24, 165:6</p> <p>school [8] - 152:5, 152:7, 162:2, 162:6, 163:19, 163:21, 164:21</p> <p>schools [2] - 162:4, 162:17</p> <p>Scoot [1] - 151:19</p> <p>Scotts [4] - 162:5, 163:20, 164:1, 164:14</p> <p>screen [10] - 5:11, 83:8, 87:15, 87:18, 110:10, 142:19, 153:4, 167:7, 171:3, 209:1</p> <p>screens [1] - 5:9</p> <p>screw [1] - 242:4</p>	<p>sealed [1] - 111:14</p> <p>seat [4] - 200:9, 200:11, 218:13, 248:2</p> <p>seated [3] - 120:21, 151:5, 151:19</p> <p>Second [1] - 63:4</p> <p>second [13] - 18:14, 53:24, 59:11, 69:15, 70:23, 73:11, 76:5, 76:19, 83:13, 97:15, 147:18, 157:21, 249:12</p> <p>seconds [2] - 235:19, 253:16</p> <p>Secreted [1] - 250:22</p> <p>secrets [1] - 233:4</p> <p>see [61] - 5:9, 9:6, 9:9, 12:6, 13:8, 25:24, 29:23, 30:8, 53:5, 70:19, 70:21, 79:25, 85:20, 87:20, 88:8, 88:12, 118:4, 120:17, 128:14, 128:20, 129:11, 130:3, 132:1, 140:17, 140:25, 141:5, 142:18, 142:19, 144:24, 145:2, 153:4, 154:11, 155:19, 155:20, 157:23, 158:11, 158:18, 160:20, 162:9, 163:7, 164:9, 167:3, 167:6, 167:7, 180:21, 183:1, 198:1, 198:6, 198:9, 198:15, 208:25, 209:4, 209:13, 223:12, 224:9, 228:19, 230:8, 237:23, 243:11, 248:2</p> <p>See [1] - 240:7</p> <p>seeing [1] - 137:13</p> <p>seeking [1] - 113:1</p> <p>seem [4] - 96:17, 109:8, 118:6, 131:18</p> <p>segment [1] - 229:1</p> <p>sell [16] - 76:1, 166:12, 168:9, 170:23, 177:17, 177:25, 178:4, 178:7, 178:9, 178:22, 181:8, 183:3, 185:7, 185:10, 185:13</p> <p>Selling [4] - 93:2, 93:3, 192:14, 206:17</p> <p>selling [23] - 43:24, 65:21, 76:3, 76:6, 135:10, 135:17, 135:21, 166:18, 167:11, 168:22, 170:19, 170:22, 177:15, 178:2, 178:6, 181:13, 181:16, 181:18, 206:5, 206:13, 206:21, 212:13, 213:12</p> <p>sense [5] - 184:17, 207:9, 212:10, 242:7,</p>	<p>252:3</p> <p>sent [6] - 6:24, 7:20, 8:7, 8:17, 36:12, 78:25</p> <p>sentence [31] - 42:17, 42:20, 57:6, 62:9, 62:13, 66:11, 66:12, 68:20, 68:25, 69:3, 69:14, 69:17, 70:23, 71:14, 78:19, 78:22, 78:24, 79:1, 99:22, 100:21, 101:13, 101:17, 159:10, 159:14, 160:12, 160:13, 161:4, 161:6, 161:14, 161:22, 239:8</p> <p>sentenced [3] - 2:9, 3:22, 78:20</p> <p>sentencing [2] - 158:15, 159:9</p> <p>sentiment [1] - 67:16</p> <p>separate [5] - 43:13, 43:14, 56:1, 56:22, 253:15</p> <p>separately [1] - 253:8</p> <p>September [4] - 59:13, 97:14, 139:18, 140:21</p> <p>sequences [1] - 15:2</p> <p>serenading [1] - 101:23</p> <p>Sergeant [3] - 243:20, 247:10, 247:18</p> <p>sergeant [1] - 247:11</p> <p>series [1] - 68:13</p> <p>serious [2] - 89:14, 248:6</p> <p>serve [1] - 235:5</p> <p>serving [6] - 42:17, 62:10, 66:10, 99:22, 100:21, 101:13</p> <p>session [5] - 19:7, 19:9, 117:2, 143:22, 227:18</p> <p>sessions [1] - 156:23</p> <p>set [10] - 21:7, 26:23, 28:23, 88:13, 89:13, 113:10, 113:11, 116:1, 159:12, 202:16</p> <p>setting [2] - 21:15, 94:6</p> <p>setup [1] - 9:11</p> <p>seven [1] - 234:24</p> <p>Several [1] - 34:20</p> <p>several [10] - 34:21, 58:2, 58:6, 77:2, 78:18, 83:8, 139:2, 177:16, 229:15, 235:7</p> <p>severance [2] - 150:21, 150:23</p> <p>shaft [1] - 241:5</p> <p>shall [4] - 4:15, 156:24, 157:18, 159:10</p> <p>share [2] - 240:11</p> <p>SHAWN [1] - 1:8</p> <p>Shawn [8] - 73:20,</p>
	<p>S</p>			
	<p>S-41 [3] - 225:6, 225:7, 225:14</p>			

<p>121:12, 121:23, 124:10, 163:5, 163:11, 163:14, 163:19</p> <p>Sheistyville [4] - 74:23, 75:2, 75:15, 75:25</p> <p>Shell [6] - 129:7, 130:6, 130:18, 194:5, 194:15, 196:24</p> <p>Shelly [16] - 121:11, 121:19, 138:11, 162:7, 162:15, 162:17, 162:23, 163:16, 168:24, 169:10, 169:18, 171:15, 174:13, 174:25, 183:11, 194:1</p> <p>SHELLY [1] - 1:8</p> <p>Shelton [17] - 69:18, 71:15, 71:16, 87:22, 87:24, 89:12, 89:15, 90:19, 91:17, 92:2, 94:16, 96:4, 96:9, 96:11, 96:13, 96:15</p> <p>SHELTON [1] - 1:7</p> <p>shield [1] - 3:20</p> <p>shirt [7] - 121:22, 122:1, 122:3, 162:13, 163:10, 164:12, 237:22</p> <p>shit [4] - 19:12, 19:15, 31:12, 87:25</p> <p>shook [1] - 94:18</p> <p>shooting [7] - 190:7, 190:11, 190:12, 192:16, 192:24, 209:12, 229:21</p> <p>Shooting [1] - 190:15</p> <p>Shopping [11] - 146:21, 146:23, 179:13, 179:17, 179:21, 180:20, 184:3, 185:15, 194:17, 194:18, 194:19</p> <p>shopping [1] - 184:2</p> <p>Shores [1] - 112:19</p> <p>shorted [1] - 251:2</p> <p>shorten [1] - 78:24</p> <p>shortening [1] - 78:22</p> <p>shorting [1] - 239:20</p> <p>shortly [3] - 119:4, 125:13, 247:18</p> <p>shot [14] - 60:6, 60:11, 166:23, 189:13, 189:15, 189:17, 189:18, 189:19, 189:20, 190:2, 190:16, 191:25, 192:18, 192:19</p> <p>show [22] - 4:1, 4:19, 15:16, 22:3, 22:8, 65:7, 116:17, 140:19, 153:16, 163:25, 166:20, 182:11, 196:21, 208:23, 226:2, 228:25, 238:10, 239:11, 249:6, 251:8, 253:22, 253:25</p> <p>show-up [1] - 238:10</p>	<p>showed [6] - 61:10, 78:2, 78:15, 88:9, 214:14, 223:20</p> <p>showing [3] - 141:16, 165:4, 165:23</p> <p>shown [1] - 15:6</p> <p>sic [1] - 156:6</p> <p>sic [1] - 213:8</p> <p>Side [9] - 65:12, 65:16, 66:5, 179:13, 179:17, 179:21, 180:20, 184:3, 185:15</p> <p>side [5] - 48:3, 53:5, 54:11, 56:18, 112:18</p> <p>sign [2] - 70:24, 235:9</p> <p>signal [2] - 86:4, 86:11</p> <p>signature [4] - 153:19, 153:25, 155:25, 256:10</p> <p>signatures [2] - 153:7, 156:3</p> <p>signed [6] - 154:5, 154:10, 154:13, 155:18, 155:22, 156:8</p> <p>significant [5] - 113:20, 232:6, 233:12, 234:22, 241:9</p> <p>significantly [1] - 241:7</p> <p>Similar [1] - 67:9</p> <p>similar [1] - 67:17</p> <p>simplest [1] - 120:4</p> <p>simply [8] - 4:3, 15:22, 114:14, 120:16, 139:5, 155:9, 240:11, 241:12</p> <p>single [2] - 18:15, 172:20</p> <p>singular [1] - 238:16</p> <p>sister [2] - 13:11, 13:21</p> <p>sit [7] - 5:16, 18:5, 36:3, 45:15, 66:10, 130:18, 236:14</p> <p>sitting [6] - 18:10, 25:5, 111:13, 146:15, 224:21, 248:4</p> <p>situation [1] - 6:4</p> <p>six [5] - 43:11, 46:6, 46:10, 46:11, 46:17</p> <p>Six [5] - 162:24, 252:13, 252:15, 252:18, 252:22</p> <p>skipping [1] - 59:17</p> <p>slides [1] - 20:9</p> <p>Slow [4] - 12:24, 13:1, 13:4, 14:1</p> <p>slow [1] - 145:19</p> <p>Slow's [4] - 13:11, 13:21, 30:8, 30:16</p> <p>smiled [1] - 94:18</p> <p>Smith [8] - 192:5, 192:6, 192:12, 229:25, 230:13, 232:5, 233:13, 235:15</p>	<p>Smokey [3] - 191:19, 192:17, 192:20</p> <p>Snitching [1] - 228:24</p> <p>so-called [1] - 32:17</p> <p>social [1] - 64:14</p> <p>society [1] - 44:6</p> <p>soft [1] - 17:18</p> <p>Sold [1] - 178:16</p> <p>sold [18] - 40:1, 96:5, 167:4, 168:17, 178:19, 179:8, 179:14, 181:4, 183:12, 183:13, 183:23, 184:3, 184:4, 184:5, 184:7, 184:24, 185:3</p> <p>sole [1] - 159:17</p> <p>solution [1] - 72:15</p> <p>solves [1] - 241:5</p> <p>someone [9] - 19:2, 40:13, 50:3, 50:4, 54:24, 58:20, 90:12, 102:14, 104:1</p> <p>Someone [1] - 19:12</p> <p>sometime [5] - 35:8, 116:6, 118:20, 144:10, 165:1</p> <p>sometimes [13] - 11:12, 12:4, 12:8, 14:19, 14:20, 14:21, 15:19, 44:2, 73:19, 171:20, 172:6, 172:23, 178:8</p> <p>Sometimes [5] - 12:10, 14:21, 58:22, 140:25, 181:17</p> <p>somewhat [2] - 125:3, 125:8</p> <p>somewhere [4] - 22:6, 173:18, 180:25, 204:14</p> <p>songs [4] - 96:20, 96:23, 101:23, 103:23</p> <p>soon [3] - 57:13, 219:18, 248:23</p> <p>Sorry [3] - 79:23, 194:15, 198:22</p> <p>sorry [29] - 7:25, 12:20, 21:9, 27:11, 55:17, 58:25, 98:17, 102:4, 104:18, 117:8, 117:17, 117:21, 128:11, 130:20, 133:1, 140:17, 142:18, 143:3, 150:7, 161:1, 186:6, 196:4, 225:9, 236:16, 240:2, 241:12, 248:12, 253:17</p> <p>Sort [1] - 18:25</p> <p>sort [17] - 4:10, 5:12, 33:20, 53:8, 53:18, 63:8, 67:11, 76:7, 78:10, 80:11, 145:15, 158:24, 202:16, 227:13, 238:19, 239:16, 252:3</p>	<p>sorts [1] - 158:16</p> <p>sound [6] - 25:6, 32:20, 120:8, 133:9, 249:1, 249:2</p> <p>sounds [4] - 41:2, 42:3, 62:23, 229:6</p> <p>Sounds [1] - 72:10</p> <p>source [2] - 244:2, 244:5</p> <p>South [20] - 35:11, 35:25, 65:12, 66:5, 67:11, 72:14, 77:2, 77:16, 96:6, 104:7, 104:8, 104:11, 104:16, 104:23, 179:12, 179:23, 183:13, 188:9, 188:16</p> <p>southeast [1] - 195:25</p> <p>Southern [1] - 71:2</p> <p>Southwest [10] - 35:18, 171:11, 180:13, 180:25, 182:9, 183:23, 184:1, 184:22, 184:25, 185:1</p> <p>southwest [1] - 171:10</p> <p>speaking [1] - 180:3</p> <p>speaks [5] - 17:7, 17:10, 17:15, 17:18, 20:22</p> <p>special [2] - 3:18, 173:23</p> <p>specific [3] - 90:12, 138:20, 186:3</p> <p>specifically [9] - 4:18, 9:14, 86:3, 114:12, 119:6, 181:16, 224:3, 245:4, 245:18</p> <p>Specifically [2] - 113:15, 121:15</p> <p>specifics [1] - 41:3</p> <p>spectators [1] - 111:16</p> <p>speculate [1] - 4:5</p> <p>speculation [2] - 4:16, 169:16</p> <p>spell [3] - 120:22, 148:4, 151:20</p> <p>spelled [1] - 157:17</p> <p>Spence [19] - 2:9, 4:20, 119:12, 124:16, 136:24, 141:25, 147:16, 147:19, 147:22, 202:7, 202:10, 202:12, 202:14, 203:12, 207:3, 221:22, 223:19, 239:12, 253:23</p> <p>Spence's [1] - 212:3</p> <p>spent [8] - 21:9, 40:24, 44:22, 44:25, 45:7, 45:16, 46:2, 231:5</p> <p>spill [1] - 48:2</p> <p>split [2] - 221:10, 233:8</p> <p>spoken [1] - 19:1</p> <p>Sports [1] - 58:19</p>	<p>spot [5] - 131:5, 167:7, 174:13, 174:17, 208:5</p> <p>spots [2] - 167:6, 171:1</p> <p>spreading [1] - 49:12</p> <p>spreads [1] - 61:22</p> <p>staff [1] - 112:4</p> <p>stand [9] - 110:1, 112:8, 120:18, 151:5, 151:15, 167:3, 167:5, 180:4, 228:10</p> <p>standing [1] - 228:8</p> <p>Standing [1] - 54:11</p> <p>stands [1] - 236:15</p> <p>start [10] - 11:13, 64:14, 76:7, 79:25, 109:23, 227:16, 229:5, 232:19, 241:17, 242:6</p> <p>start-up [1] - 76:7</p> <p>started [16] - 28:15, 79:17, 98:5, 98:7, 98:11, 98:19, 109:20, 109:22, 166:3, 168:22, 170:19, 170:22, 172:10, 177:15, 190:12, 200:20</p> <p>starting [2] - 123:1, 166:11</p> <p>state [23] - 4:17, 4:19, 66:4, 78:20, 97:25, 152:17, 154:6, 155:1, 156:13, 156:22, 156:24, 159:3, 160:19, 161:10, 205:12, 231:7, 236:21, 236:22, 237:20, 237:25, 238:12, 238:13, 241:10</p> <p>State [13] - 42:14, 120:22, 151:20, 156:19, 158:13, 158:23, 159:9, 159:13, 159:16, 160:8, 160:11, 160:12</p> <p>State's [2] - 117:4, 143:22</p> <p>statement [46] - 18:16, 34:8, 89:10, 115:21, 115:23, 115:24, 116:4, 116:6, 116:18, 139:11, 139:21, 216:7, 216:8, 216:9, 243:20, 243:23, 244:1, 244:4, 244:25, 245:1, 245:2, 245:3, 245:19, 245:20, 245:23, 246:5, 246:11, 246:23, 246:25, 247:21, 247:23, 248:9, 248:14, 248:22, 249:3, 249:10, 250:25, 251:3, 251:11, 251:14, 251:25, 252:3, 252:5, 252:6</p> <p>statements [39] - 14:15, 16:14, 83:5, 83:6, 87:6, 87:13, 87:14, 88:14,</p>
--	---	--	---	--

<p>97:4, 112:14, 113:3, 113:13, 113:20, 113:25, 114:1, 115:19, 116:14, 116:23, 117:14, 118:16, 119:4, 119:7, 120:8, 136:10, 139:2, 139:5, 139:9, 148:13, 148:15, 151:2, 160:4, 234:24, 243:21, 243:22, 244:18, 244:24, 250:11, 250:17</p> <p>States [2] - 151:14, 156:25</p> <p>STATES [2] - 1:1, 1:5</p> <p>Station [3] - 27:9, 27:16, 174:2</p> <p>station [12] - 129:7, 130:7, 130:18, 146:17, 146:20, 174:3, 190:8, 190:9, 194:5, 194:15, 196:24, 247:9</p> <p>stay [6] - 42:6, 65:2, 69:24, 193:22, 204:18, 240:8</p> <p>stayed [2] - 101:1, 187:25</p> <p>staying [1] - 194:6</p> <p>stealing [2] - 43:24, 109:4</p> <p>Steel [1] - 56:18</p> <p>stenographically [1] - 256:4</p> <p>Stewart [3] - 192:9, 192:10, 192:12</p> <p>stick [1] - 92:14</p> <p>Still [3] - 130:10, 196:1, 196:2</p> <p>still [24] - 31:10, 31:17, 43:15, 46:23, 47:16, 56:8, 56:14, 62:12, 62:15, 66:5, 71:15, 101:11, 123:3, 129:19, 130:9, 133:5, 154:25, 190:5, 194:8, 206:2, 206:5, 206:9, 223:8, 227:19</p> <p>stint [1] - 194:9</p> <p>Stocksdale [6] - 117:4, 143:23, 143:25, 144:12, 144:17, 144:21</p> <p>Stockton [1] - 77:14</p> <p>stole [1] - 150:10</p> <p>stop [4] - 213:3, 243:21, 246:16, 248:1</p> <p>Stop [1] - 228:24</p> <p>stopped [2] - 107:11, 178:6</p> <p>store [4] - 182:4, 182:18, 183:3, 183:6</p> <p>stories [3] - 186:1, 186:4, 186:13</p>	<p>story [4] - 32:1, 55:20, 126:14, 217:14</p> <p>Stover [1] - 77:14</p> <p>straight [1] - 179:25</p> <p>strange [1] - 96:12</p> <p>strategic [3] - 230:17, 237:16, 238:6</p> <p>Street [1] - 1:25</p> <p>street [12] - 34:4, 44:23, 45:7, 45:16, 46:3, 49:17, 58:8, 58:20, 71:16, 178:11, 180:23, 208:5</p> <p>stricken [1] - 244:12</p> <p>strike [11] - 11:13, 74:5, 115:5, 115:6, 169:14, 186:2, 186:11, 249:19, 249:20, 250:6, 250:7</p> <p>Strike [1] - 115:12</p> <p>strips [1] - 225:11</p> <p>strongly [1] - 116:15</p> <p>stuck [4] - 60:8, 95:3, 95:22, 103:25</p> <p>studio [1] - 102:21</p> <p>stuff [10] - 93:14, 102:5, 102:8, 102:22, 118:1, 126:1, 135:6, 190:6, 208:17, 238:9</p> <p>stupid [2] - 8:10, 131:18</p> <p>style [1] - 242:14</p> <p>sub [3] - 148:24, 149:1, 149:15</p> <p>sub-conspiracies [2] - 148:24, 149:15</p> <p>sub-conspiracy [1] - 149:1</p> <p>subconsciously [1] - 95:20</p> <p>subject [1] - 160:18</p> <p>submit [5] - 148:9, 245:6, 249:16, 253:11, 253:12</p> <p>Submit [1] - 252:2</p> <p>submits [1] - 235:16</p> <p>submitted [1] - 117:1</p> <p>Subparagraph [1] - 160:20</p> <p>subpoena [1] - 238:14</p> <p>subpoenaed [4] - 236:24, 236:25, 237:2, 237:3</p> <p>subsequent [3] - 131:7, 146:25, 148:5</p> <p>Subsequently [2] - 132:25, 133:1</p> <p>subset [2] - 149:14, 149:21</p> <p>subsidiary [1] - 114:3</p> <p>substantial [1] - 124:18</p> <p>subsumed [1] - 247:21</p> <p>subway [1] - 26:8</p>	<p>success [2] - 41:8, 42:3</p> <p>successful [2] - 17:5, 17:13</p> <p>sudden [5] - 231:11, 243:3, 243:4, 243:7</p> <p>sufficient [3] - 244:10, 250:3, 250:5</p> <p>suggest [3] - 30:13, 108:25, 241:19</p> <p>suggesting [1] - 232:8</p> <p>suggestion [1] - 237:9</p> <p>suggestions [2] - 6:25, 7:4</p> <p>suggests [1] - 118:18</p> <p>summarize [2] - 155:11, 155:12</p> <p>summarizing [1] - 51:5</p> <p>Sunday [1] - 118:10</p> <p>supervised [1] - 159:16</p> <p>supplied [1] - 167:11</p> <p>supply [4] - 71:1, 167:16, 177:21, 181:20</p> <p>supplying [3] - 140:1, 140:3, 140:4</p> <p>support [2] - 112:4, 116:22</p> <p>supporting [1] - 65:13</p> <p>suppose [1] - 187:6</p> <p>supposed [10] - 101:16, 126:4, 126:18, 127:13, 135:5, 140:8, 140:13, 141:6, 142:23, 235:5</p> <p>supposedly [3] - 141:24, 148:16</p> <p>suppress [1] - 248:9</p> <p>suppression [2] - 118:24, 242:2</p> <p>Surely [1] - 237:2</p> <p>surprise [2] - 134:22, 134:24</p> <p>surveil [4] - 92:14, 105:20, 106:3, 106:5</p> <p>surveillance [3] - 92:10, 105:16, 124:19</p> <p>surveillances [1] - 225:19</p> <p>surveilled [5] - 12:1, 12:2, 12:3, 19:25, 29:24</p> <p>surveilling [3] - 9:25, 10:19, 81:25</p> <p>suspended [1] - 159:15</p> <p>suspicious [1] - 198:14</p> <p>Sustained [19] - 23:7, 23:22, 37:16, 38:6, 44:20, 54:15, 58:14, 62:4, 67:25, 70:17, 72:17, 73:3, 73:6, 99:14, 110:21, 110:25, 145:24, 175:24, 217:21</p> <p>sustained [2] - 24:1,</p>	<p>72:8</p> <p>sworn [3] - 120:18, 151:5, 151:15</p> <p>SWORN [2] - 120:19, 151:17</p> <p>syllable [1] - 73:19</p> <p>sync [1] - 5:24</p> <p>system [1] - 25:7</p>	<p>terrible [1] - 237:24</p> <p>Terry [3] - 157:20, 159:4, 205:11</p> <p>test [1] - 7:19</p> <p>testified [26] - 4:2, 4:8, 19:4, 32:19, 32:21, 32:22, 33:3, 33:7, 74:4, 74:5, 80:18, 81:19, 90:18, 94:24, 98:3, 98:13, 99:15, 105:16, 106:8, 106:25, 145:6, 243:20, 245:19, 247:11, 247:18, 248:14</p> <p>testifies [2] - 229:21, 234:15</p> <p>testify [11] - 3:16, 3:17, 157:14, 230:9, 230:20, 231:11, 232:14, 233:20, 236:22, 239:15</p> <p>testifying [6] - 81:15, 99:24, 142:4, 142:5, 142:10, 142:12</p> <p>testimony [53] - 23:8, 33:19, 50:13, 50:19, 51:2, 51:6, 52:1, 52:4, 52:9, 52:25, 54:1, 68:17, 69:10, 70:13, 70:15, 71:10, 72:4, 75:3, 75:21, 80:1, 89:1, 90:2, 94:20, 99:16, 111:9, 115:7, 116:13, 116:14, 117:14, 119:1, 141:13, 147:6, 148:6, 150:18, 186:13, 205:13, 224:17, 228:17, 229:24, 230:19, 232:6, 234:2, 241:8, 241:19, 243:4, 245:2, 247:6, 249:20, 250:6, 250:8</p> <p>testing [1] - 8:6</p> <p>TFC [1] - 6:22</p> <p>THE [396] - 1:1, 1:2, 2:2, 2:17, 4:25, 5:3, 5:7, 5:11, 5:16, 5:22, 5:25, 6:3, 14:16, 16:15, 22:7, 22:18, 23:3, 23:7, 23:22, 24:1, 24:7, 24:10, 24:12, 24:15, 24:18, 24:24, 25:3, 25:10, 25:15, 25:18, 27:10, 27:12, 28:9, 28:11, 28:12, 28:13, 30:25, 31:2, 33:13, 33:14, 36:20, 37:16, 37:23, 38:6, 38:8, 44:20, 46:10, 47:25, 50:1, 50:9, 52:8, 52:11, 52:13, 54:15, 55:16, 58:14, 62:4, 67:25, 70:17, 72:8, 72:10, 72:17, 73:3, 73:6, 73:8, 73:10, 76:21, 80:21,</p>
--	---	--	---	--

81:5, 81:10, 82:23, 82:25, 83:3, 83:11, 83:15, 83:17, 83:21, 83:24, 84:1, 84:3, 84:5, 84:8, 84:14, 84:21, 84:23, 85:7, 85:12, 85:14, 85:20, 85:23, 87:19, 87:21, 89:8, 89:25, 96:25, 99:9, 99:14, 100:6, 100:9, 100:15, 104:19, 108:15, 110:21, 110:25, 111:2, 111:12, 111:17, 111:24, 112:8, 112:13, 114:9, 114:13, 114:18, 114:20, 114:25, 115:11, 115:21, 116:3, 116:7, 117:8, 117:11, 117:17, 117:20, 117:25, 118:7, 118:21, 119:6, 120:4, 120:15, 120:20, 120:21, 120:23, 120:25, 121:2, 121:16, 122:6, 122:25, 123:1, 123:14, 123:18, 123:19, 123:20, 123:22, 124:9, 124:10, 124:11, 124:12, 124:13, 125:5, 125:6, 126:16, 126:21, 127:4, 128:11, 128:15, 128:17, 128:24, 129:1, 129:2, 129:3, 129:4, 129:5, 129:6, 129:8, 129:9, 129:10, 129:12, 129:13, 129:15, 129:17, 129:18, 129:19, 129:20, 129:21, 129:22, 129:23, 130:2, 130:12, 130:20, 130:22, 131:16, 131:17, 131:18, 131:19, 131:20, 131:21, 131:23, 131:25, 132:1, 132:3, 132:5, 132:13, 132:18, 133:1, 134:5, 134:17, 134:18, 134:19, 134:20, 134:22, 134:23, 134:24, 134:25, 136:2, 136:5, 136:17, 137:9, 137:11, 138:8, 140:7, 140:17, 140:23, 141:4, 141:16, 141:19, 144:4, 144:7, 145:24, 146:2, 146:10, 146:12, 146:22, 148:3, 148:10, 148:18, 148:22, 149:12, 149:17, 149:23, 150:7, 150:16, 150:21, 150:25, 151:4, 151:9, 151:15, 151:18, 151:19, 151:21, 155:11, 162:16, 163:13, 169:15, 171:13, 171:18, 175:24, 176:4, 176:5, 176:6, 176:7, 176:8, 179:6,	180:4, 181:6, 181:11, 182:13, 184:9, 185:12, 185:18, 186:3, 186:5, 186:6, 186:7, 186:8, 186:9, 186:12, 186:17, 191:2, 197:12, 202:20, 203:14, 203:16, 203:24, 204:1, 204:2, 204:4, 204:5, 204:8, 204:12, 204:15, 204:17, 204:18, 204:21, 205:21, 206:8, 216:19, 217:21, 218:1, 219:1, 219:20, 220:3, 220:19, 225:9, 225:13, 226:22, 227:10, 227:25, 228:5, 228:13, 228:15, 228:19, 228:23, 229:3, 229:10, 230:8, 230:12, 230:21, 231:5, 231:10, 231:15, 231:20, 232:1, 232:7, 232:10, 232:18, 232:25, 233:3, 233:6, 233:10, 233:16, 233:18, 233:22, 233:25, 234:4, 234:7, 234:9, 234:12, 234:16, 234:19, 234:23, 235:14, 235:21, 235:25, 236:7, 236:10, 236:19, 236:24, 237:2, 237:6, 237:17, 237:21, 238:24, 239:4, 239:9, 239:19, 240:1, 240:24, 241:12, 241:16, 242:20, 243:14, 243:25, 244:14, 244:20, 244:25, 245:6, 245:9, 245:12, 245:22, 246:1, 246:4, 246:9, 246:13, 246:15, 246:21, 247:3, 247:13, 247:16, 247:24, 248:12, 248:16, 249:1, 249:5, 249:9, 249:16, 250:5, 250:14, 250:20, 250:23, 250:25, 251:4, 251:7, 251:16, 251:21, 252:2, 252:6, 252:9, 252:12, 252:15, 252:19, 252:24, 253:6, 253:10, 253:14, 253:25, 254:3 theater [1] - 135:2 thefts [1] - 77:10 themselves [1] - 17:8 thereafter [2] - 125:13, 247:19 thereby [1] - 150:4 therefore [2] - 42:6, 150:14 they've [1] - 139:11 They've [1] - 83:7 thin [3] - 68:22, 72:5, 120:11	thinking [3] - 57:13, 115:2, 202:9 third [1] - 12:17 Thomas [1] - 1:20 thousand [6] - 142:14, 144:24, 145:2, 145:7, 145:13, 213:18 threatened [1] - 82:15 Three [4] - 37:5, 122:7, 155:16, 171:1 three [35] - 12:7, 24:11, 87:17, 87:22, 87:25, 122:5, 122:16, 122:20, 122:23, 126:9, 126:11, 128:19, 132:16, 153:2, 161:23, 165:1, 172:15, 185:22, 188:5, 200:21, 200:24, 201:1, 201:2, 201:4, 202:23, 203:1, 206:1, 222:10, 226:20, 236:9, 236:10, 236:11, 238:11, 242:11, 243:14 throughout [1] - 91:4 throw [2] - 15:1, 43:12 thrown [1] - 32:10 thug [1] - 54:1 Thursday [1] - 227:18 tickets [5] - 126:4, 135:4, 142:24, 217:5, 217:7 tide [1] - 75:25 tied [1] - 118:11 tier [8] - 33:23, 40:21, 47:6, 48:7, 49:12, 50:21, 50:23, 53:3 tiers [2] - 48:9, 48:11 timely [1] - 248:18 title [1] - 79:17 today [23] - 6:5, 33:7, 36:3, 45:15, 45:20, 55:21, 66:10, 68:17, 69:10, 71:10, 80:10, 81:15, 98:4, 98:21, 99:24, 111:6, 119:2, 162:9, 163:7, 164:9, 205:13, 240:14, 243:12 together [6] - 27:24, 89:19, 147:13, 176:15, 176:17, 223:12 Tommy [5] - 55:14, 55:18, 69:4, 71:2, 71:6 tomorrow [12] - 227:16, 227:17, 227:22, 228:1, 232:19, 234:17, 236:5, 236:11, 236:13, 240:25, 242:23, 254:3 Tonya [6] - 147:16, 221:22, 222:2, 226:6, 239:12, 253:23 Tonya's [1] - 225:19	took [31] - 11:10, 20:4, 42:10, 54:5, 68:6, 71:17, 88:3, 104:14, 105:7, 105:8, 113:14, 118:20, 127:20, 144:20, 144:21, 144:23, 144:24, 152:15, 152:17, 222:6, 222:7, 224:25, 225:2, 225:3, 225:18, 226:4, 232:6, 237:25, 243:21, 243:22 Took [1] - 20:11 top [1] - 52:5 topic [2] - 31:10, 80:10 torn [1] - 183:18 total [1] - 48:6 touch [5] - 30:6, 91:3, 94:1, 106:16, 211:2 tough [7] - 37:11, 38:3, 40:21, 48:17, 49:2, 50:12, 54:1 toward [3] - 98:10, 120:21, 151:20 towards [1] - 5:13 towers [1] - 235:10 town [2] - 179:20, 207:23 Toyota [2] - 175:2, 175:3 traced [3] - 13:6, 203:7, 203:8 traditional [1] - 120:12 traffic [3] - 17:24, 196:5, 248:1 trafficker [1] - 38:25 traffickers [6] - 34:5, 34:15, 38:10, 77:12, 77:16, 77:17 trafficking [7] - 49:4, 49:5, 89:5, 135:7, 135:9, 166:7, 182:5 transcribed [1] - 256:7 transcript [12] - 5:19, 23:19, 24:12, 115:17, 116:11, 118:21, 142:18, 242:11, 245:17, 246:18, 256:7 transcripts [1] - 6:1 transferred [2] - 56:13, 222:5 transition [1] - 75:19 translate [1] - 110:13 transmitter [5] - 7:13, 81:22, 81:24, 82:14, 86:18 transportation [2] - 27:19, 29:9 transported [1] - 247:20 trash [1] - 20:4 traveling [1] - 248:3	trial [19] - 3:1, 3:19, 14:19, 25:5, 81:15, 124:12, 149:5, 157:15, 232:24, 233:25, 236:21, 236:23, 237:20, 237:25, 238:11, 242:3, 242:4, 242:8, 243:5 trick [1] - 18:23 tried [10] - 2:8, 3:21, 4:11, 19:5, 96:10, 96:12, 144:7, 144:8, 238:4, 253:8 triple [1] - 56:17 tripped [1] - 130:15 trips [7] - 173:1, 173:12, 175:21, 176:1, 176:20, 177:5, 225:1 Trooper [4] - 245:19, 247:10, 247:14, 248:14 trooper [7] - 245:23, 248:2, 248:4, 251:1, 252:9, 252:24, 253:7 trooper's [5] - 245:2, 245:14, 249:3, 249:4, 249:6 trouble [2] - 71:9, 71:19 troubling [1] - 67:21 true [5] - 89:4, 139:17, 143:7, 241:12, 241:13 trump [1] - 3:2 truncated [1] - 238:2 trust [1] - 40:5 truth [7] - 2:24, 3:3, 33:22, 34:13, 109:3, 160:24, 235:6 truthful [1] - 70:14 truthfully [2] - 156:21, 157:14 truthfulness [1] - 110:17 try [13] - 5:10, 27:21, 65:1, 80:15, 87:1, 97:3, 118:14, 121:8, 182:22, 238:13, 242:6, 242:14, 242:20 Try [1] - 21:13 trying [21] - 7:5, 10:9, 19:12, 19:14, 19:15, 19:19, 21:9, 28:17, 43:12, 82:5, 93:6, 93:9, 130:3, 130:18, 137:18, 148:12, 149:12, 149:25, 220:4, 241:19 Trying [1] - 130:20 Tuesday [6] - 1:11, 237:10, 238:21, 238:22, 239:24, 240:19 turn [6] - 7:21, 10:15, 20:21, 50:4, 157:6, 231:23
--	---	--	---	---

<p>turned [4] - 10:12, 20:14, 39:2, 110:4</p> <p>turning [2] - 17:12, 86:23</p> <p>Turning [1] - 125:11</p> <p>twenty [1] - 158:2</p> <p>Twenty [1] - 43:6</p> <p>twice [1] - 142:5</p> <p>Twice [1] - 142:7</p> <p>twist [1] - 72:25</p> <p>two [50] - 7:15, 7:16, 8:15, 11:23, 12:7, 12:14, 25:10, 35:20, 35:21, 41:18, 53:15, 54:10, 57:4, 61:2, 61:17, 78:6, 79:19, 81:19, 95:2, 103:19, 116:18, 147:2, 152:17, 162:4, 223:22, 225:6, 228:9, 229:4, 232:14, 233:19, 233:21, 235:17, 236:16, 237:13, 238:1, 238:11, 238:25, 239:15, 240:20, 240:21, 241:1, 241:17, 243:8, 244:4, 245:4, 250:1, 251:16, 253:15</p> <p>Two [7] - 45:9, 62:19, 142:18, 153:7, 154:16, 155:15, 158:2</p> <p>type [3] - 230:15, 238:18, 249:13</p> <p>typically [1] - 44:5</p> <p>Tyree [4] - 192:5, 192:6, 192:10, 192:12</p> <p>Tyree's [1] - 192:8</p>	<p>understood [1] - 160:9</p> <p>Understood [1] - 136:9</p> <p>undertake [1] - 38:9</p> <p>undertook [1] - 119:16</p> <p>unfair [3] - 230:18, 237:11, 238:20</p> <p>unfortunately [1] - 110:13</p> <p>unimportant [1] - 53:19</p> <p>unintelligible [2] - 46:15, 72:1</p> <p>unique [1] - 95:9</p> <p>uniquely [1] - 238:16</p> <p>United [2] - 151:13, 156:25</p> <p>UNITED [2] - 1:1, 1:5</p> <p>unknown [1] - 141:8</p> <p>unlucky [1] - 44:14</p> <p>unquote [2] - 31:12, 113:12</p> <p>unwise [2] - 203:1, 203:4</p> <p>up [175] - 12:17, 21:7, 21:15, 22:25, 26:11, 26:12, 26:17, 26:23, 27:10, 28:23, 31:11, 31:21, 32:3, 37:7, 44:17, 52:6, 59:8, 61:10, 61:14, 65:7, 67:11, 69:7, 71:15, 76:7, 76:16, 77:5, 79:1, 80:10, 80:11, 80:25, 81:2, 81:12, 87:8, 88:9, 88:13, 89:13, 90:8, 92:6, 92:12, 92:13, 92:24, 93:20, 94:6, 94:8, 106:20, 110:10, 114:15, 116:1, 117:11, 117:15, 117:21, 118:11, 119:10, 119:14, 121:16, 122:11, 124:22, 124:24, 125:2, 125:8, 125:12, 125:15, 125:25, 127:12, 128:12, 128:14, 129:12, 129:13, 130:15, 130:16, 130:23, 130:25, 132:20, 137:3, 142:18, 149:23, 150:11, 151:6, 151:19, 152:3, 152:22, 154:13, 154:17, 154:18, 154:22, 154:25, 155:3, 160:7, 160:12, 168:14, 171:6, 172:10, 172:11, 172:18, 172:25, 173:5, 175:9, 176:14, 177:11, 179:12, 181:19, 181:20, 181:21, 181:22, 181:25, 182:21, 189:20, 190:13, 190:14, 193:15, 193:20, 193:22, 195:6, 198:25, 200:23, 205:7, 207:6, 207:8, 207:9,</p>	<p>207:11, 207:17, 207:19, 207:21, 208:3, 208:18, 209:5, 209:9, 209:10, 211:9, 211:21, 212:18, 213:7, 214:18, 214:21, 214:22, 214:24, 215:1, 215:3, 215:4, 215:10, 215:18, 215:20, 216:1, 218:5, 219:16, 219:17, 223:1, 223:4, 223:10, 224:9, 226:16, 227:14, 229:18, 229:24, 230:5, 231:2, 233:8, 233:20, 235:9, 236:15, 237:15, 238:10, 240:1, 240:7, 240:19, 242:4, 243:3, 244:2, 248:13, 249:10, 251:1, 252:10, 252:21, 253:2</p> <p>upstairs [1] - 68:22</p> <p>urine [6] - 41:18, 42:4, 107:9, 107:12, 107:13, 107:16</p> <p>USA [1] - 256:4</p> <p>user [1] - 64:15</p> <p>usual [1] - 232:21</p> <p>uttered [1] - 216:21</p>	<p>violation [7] - 107:3, 119:15, 125:18, 159:22, 160:1, 160:10, 193:21</p> <p>violence [3] - 42:20, 62:10, 157:22</p> <p>virtually [1] - 116:9</p> <p>visit [3] - 189:23, 226:5, 227:14</p> <p>voice [4] - 17:17, 127:15, 151:6, 240:2</p> <p>voir [1] - 242:2</p> <p>VOLUME [1] - 1:11</p> <p>vouch [1] - 109:25</p> <p>vouched [1] - 110:2</p>	<p>129:7, 133:3, 134:15, 135:3, 135:4, 140:9, 141:7, 142:3, 142:24, 162:7, 162:15, 162:17, 162:23, 163:16, 163:18, 168:24, 169:10, 169:18, 171:15, 173:6, 174:13, 174:25, 176:19, 177:1, 183:11, 185:15, 185:22, 186:24, 190:1, 190:6, 190:24, 194:1, 196:9, 197:8, 198:21, 198:23, 199:12, 199:15, 200:4, 200:8, 200:18, 202:22, 204:25, 205:17, 205:25, 206:2, 214:20, 214:24, 215:17, 215:20, 215:23, 216:1, 216:13, 217:3, 217:5, 217:13, 217:23, 219:2, 219:9, 219:12, 219:17, 220:4, 220:16, 226:16, 226:19</p> <p>Wayne's [5] - 195:16, 199:1, 200:3, 219:10</p> <p>WCI [6] - 57:6, 57:8, 57:10, 57:15, 57:16, 97:18</p> <p>weapon [7] - 20:4, 20:11, 82:12, 88:2, 88:3, 88:5, 88:10</p> <p>wear [2] - 130:18, 157:11</p> <p>Wear [2] - 130:21, 130:22</p> <p>wearing [8] - 11:23, 20:21, 82:1, 82:10, 82:16, 146:18, 162:12, 237:22</p> <p>weather [1] - 53:19</p> <p>weed [5] - 172:6, 172:7, 186:25, 187:10, 187:12</p> <p>Week [1] - 56:5</p> <p>week [14] - 29:1, 56:7, 56:11, 64:24, 118:11, 178:23, 224:14, 224:16, 227:19, 236:17, 238:11, 239:23, 243:9</p> <p>weeks [8] - 29:3, 56:5, 56:25, 57:4, 147:5, 154:16, 238:1, 242:5</p> <p>weigh [1] - 36:25</p> <p>weights [1] - 37:8</p> <p>welcome [1] - 33:12</p> <p>welfare [1] - 26:20</p> <p>well-respected [1] - 3:2</p> <p>West [10] - 1:25, 171:9, 179:12, 179:17, 179:21, 180:20, 184:3, 185:15, 207:25, 223:8</p> <p>west [3] - 61:17, 196:1,</p>
U				
<p>U.S [5] - 1:24, 112:4, 117:3, 144:11, 155:19</p> <p>Ultimately [1] - 149:23</p> <p>ultimately [2] - 59:3, 149:4</p> <p>Um-hum [9] - 20:8, 27:17, 30:21, 49:10, 53:1, 86:7, 93:4, 95:12, 95:24</p> <p>umpteenth [1] - 151:10</p> <p>unable [1] - 42:6</p> <p>unclear [1] - 74:13</p> <p>under [12] - 3:11, 3:17, 6:6, 45:16, 54:2, 68:17, 120:16, 149:24, 173:25, 174:5, 174:17, 218:12</p> <p>Under [2] - 173:22, 174:1</p> <p>undercover [2] - 86:2, 157:10</p> <p>underneath [1] - 174:10</p>				
	<p>understood [1] - 160:9</p> <p>Understood [1] - 136:9</p> <p>undertake [1] - 38:9</p> <p>undertook [1] - 119:16</p> <p>unfair [3] - 230:18, 237:11, 238:20</p> <p>unfortunately [1] - 110:13</p> <p>unimportant [1] - 53:19</p> <p>unintelligible [2] - 46:15, 72:1</p> <p>unique [1] - 95:9</p> <p>uniquely [1] - 238:16</p> <p>United [2] - 151:13, 156:25</p> <p>UNITED [2] - 1:1, 1:5</p> <p>unknown [1] - 141:8</p> <p>unlucky [1] - 44:14</p> <p>unquote [2] - 31:12, 113:12</p> <p>unwise [2] - 203:1, 203:4</p> <p>up [175] - 12:17, 21:7, 21:15, 22:25, 26:11, 26:12, 26:17, 26:23, 27:10, 28:23, 31:11, 31:21, 32:3, 37:7, 44:17, 52:6, 59:8, 61:10, 61:14, 65:7, 67:11, 69:7, 71:15, 76:7, 76:16, 77:5, 79:1, 80:10, 80:11, 80:25, 81:2, 81:12, 87:8, 88:9, 88:13, 89:13, 90:8, 92:6, 92:12, 92:13, 92:24, 93:20, 94:6, 94:8, 106:20, 110:10, 114:15, 116:1, 117:11, 117:15, 117:21, 118:11, 119:10, 119:14, 121:16, 122:11, 124:22, 124:24, 125:2, 125:8, 125:12, 125:15, 125:25, 127:12, 128:12, 128:14, 129:12, 129:13, 130:15, 130:16, 130:23, 130:25, 132:20, 137:3, 142:18, 149:23, 150:11, 151:6, 151:19, 152:3, 152:22, 154:13, 154:17, 154:18, 154:22, 154:25, 155:3, 160:7, 160:12, 168:14, 171:6, 172:10, 172:11, 172:18, 172:25, 173:5, 175:9, 176:14, 177:11, 179:12, 181:19, 181:20, 181:21, 181:22, 181:25, 182:21, 189:20, 190:13, 190:14, 193:15, 193:20, 193:22, 195:6, 198:25, 200:23, 205:7, 207:6, 207:8, 207:9,</p>	<p>207:11, 207:17, 207:19, 207:21, 208:3, 208:18, 209:5, 209:9, 209:10, 211:9, 211:21, 212:18, 213:7, 214:18, 214:21, 214:22, 214:24, 215:1, 215:3, 215:4, 215:10, 215:18, 215:20, 216:1, 218:5, 219:16, 219:17, 223:1, 223:4, 223:10, 224:9, 226:16, 227:14, 229:18, 229:24, 230:5, 231:2, 233:8, 233:20, 235:9, 236:15, 237:15, 238:10, 240:1, 240:7, 240:19, 242:4, 243:3, 244:2, 248:13, 249:10, 251:1, 252:10, 252:21, 253:2</p> <p>upstairs [1] - 68:22</p> <p>urine [6] - 41:18, 42:4, 107:9, 107:12, 107:13, 107:16</p> <p>USA [1] - 256:4</p> <p>user [1] - 64:15</p> <p>usual [1] - 232:21</p> <p>uttered [1] - 216:21</p>	<p>violation [7] - 107:3, 119:15, 125:18, 159:22, 160:1, 160:10, 193:21</p> <p>violence [3] - 42:20, 62:10, 157:22</p> <p>virtually [1] - 116:9</p> <p>visit [3] - 189:23, 226:5, 227:14</p> <p>voice [4] - 17:17, 127:15, 151:6, 240:2</p> <p>voir [1] - 242:2</p> <p>VOLUME [1] - 1:11</p> <p>vouch [1] - 109:25</p> <p>vouched [1] - 110:2</p>	<p>129:7, 133:3, 134:15, 135:3, 135:4, 140:9, 141:7, 142:3, 142:24, 162:7, 162:15, 162:17, 162:23, 163:16, 163:18, 168:24, 169:10, 169:18, 171:15, 173:6, 174:13, 174:25, 176:19, 177:1, 183:11, 185:15, 185:22, 186:24, 190:1, 190:6, 190:24, 194:1, 196:9, 197:8, 198:21, 198:23, 199:12, 199:15, 200:4, 200:8, 200:18, 202:22, 204:25, 205:17, 205:25, 206:2, 214:20, 214:24, 215:17, 215:20, 215:23, 216:1, 216:13, 217:3, 217:5, 217:13, 217:23, 219:2, 219:9, 219:12, 219:17, 220:4, 220:16, 226:16, 226:19</p> <p>Wayne's [5] - 195:16, 199:1, 200:3, 219:10</p> <p>WCI [6] - 57:6, 57:8, 57:10, 57:15, 57:16, 97:18</p> <p>weapon [7] - 20:4, 20:11, 82:12, 88:2, 88:3, 88:5, 88:10</p> <p>wear [2] - 130:18, 157:11</p> <p>Wear [2] - 130:21, 130:22</p> <p>wearing [8] - 11:23, 20:21, 82:1, 82:10, 82:16, 146:18, 162:12, 237:22</p> <p>weather [1] - 53:19</p> <p>weed [5] - 172:6, 172:7, 186:25, 187:10, 187:12</p> <p>Week [1] - 56:5</p> <p>week [14] - 29:1, 56:7, 56:11, 64:24, 118:11, 178:23, 224:14, 224:16, 227:19, 236:17, 238:11, 239:23, 243:9</p> <p>weeks [8] - 29:3, 56:5, 56:25, 57:4, 147:5, 154:16, 238:1, 242:5</p> <p>weigh [1] - 36:25</p> <p>weights [1] - 37:8</p> <p>welcome [1] - 33:12</p> <p>welfare [1] - 26:20</p> <p>well-respected [1] - 3:2</p> <p>West [10] - 1:25, 171:9, 179:12, 179:17, 179:21, 180:20, 184:3, 185:15, 207:25, 223:8</p> <p>west [3] - 61:17, 196:1,</p>
	V	<p>vacate [1] - 111:14</p> <p>value [1] - 149:6</p> <p>variety [1] - 160:19</p> <p>vehicle [7] - 7:24, 8:1, 52:21, 174:14, 174:18, 175:5, 248:3</p> <p>vehicles [3] - 8:2, 8:4, 12:4</p> <p>veracity [1] - 110:16</p> <p>verbally [1] - 69:1</p> <p>vernacular [1] - 63:8</p> <p>version [2] - 113:14, 238:3</p> <p>Vials [1] - 169:4</p> <p>victim [10] - 54:19, 59:19, 60:11, 60:24, 140:13, 140:15, 141:8, 141:11, 215:21, 216:4</p> <p>victims [2] - 60:1, 218:19</p> <p>video [1] - 229:2</p> <p>videotaping [1] - 13:13</p> <p>view [6] - 32:14, 85:1, 112:16, 234:2, 240:5, 240:13</p> <p>violate [1] - 160:15</p> <p>violated [1] - 109:3</p> <p>violates [1] - 44:6</p> <p>Violation [1] - 154:19</p>	<p>W</p> <p>W-I-L-L-I-A-M [2] - 120:23, 151:21</p> <p>wagon [4] - 174:2, 174:3, 175:6</p> <p>Wait [4] - 136:5, 244:14, 245:22, 250:20</p> <p>wait [8] - 69:14, 71:13, 87:18, 87:22, 239:25, 245:14, 250:14, 250:20</p> <p>waited [2] - 68:2, 71:15</p> <p>waiting [1] - 224:21</p> <p>Walbrook [2] - 152:9, 152:10</p> <p>walked [4] - 8:25, 9:18, 20:4, 87:22</p> <p>walkie [3] - 224:22, 224:23, 225:3</p> <p>walkie-talkie [1] - 224:22</p> <p>walkie-talkies [2] - 224:23, 225:3</p> <p>walking [2] - 207:22, 211:9</p> <p>Wanda [1] - 161:13</p> <p>wants [2] - 25:7, 70:1</p> <p>warrant [3] - 125:21, 215:7, 215:8</p> <p>Washington [2] - 57:7, 210:5</p> <p>watch [3] - 224:7, 224:10, 224:17</p> <p>watched [3] - 10:3, 10:4</p> <p>watching [3] - 8:18, 8:22, 9:17</p> <p>water [5] - 33:13, 48:1, 120:25, 121:1, 204:16</p> <p>waved [1] - 89:16</p> <p>WAYNE [1] - 1:8</p> <p>Wayne [76] - 121:11, 121:19, 125:24, 126:4, 126:12, 127:16, 127:17, 127:19, 127:20, 129:6,</p>	<p>129:7, 133:3, 134:15, 135:3, 135:4, 140:9, 141:7, 142:3, 142:24, 162:7, 162:15, 162:17, 162:23, 163:16, 163:18, 168:24, 169:10, 169:18, 171:15, 173:6, 174:13, 174:25, 176:19, 177:1, 183:11, 185:15, 185:22, 186:24, 190:1, 190:6, 190:24, 194:1, 196:9, 197:8, 198:21, 198:23, 199:12, 199:15, 200:4, 200:8, 200:18, 202:22, 204:25, 205:17, 205:25, 206:2, 214:20, 214:24, 215:17, 215:20, 215:23, 216:1, 216:13, 217:3, 217:5, 217:13, 217:23, 219:2, 219:9, 219:12, 219:17, 220:4, 220:16, 226:16, 226:19</p> <p>Wayne's [5] - 195:16, 199:1, 200:3, 219:10</p> <p>WCI [6] - 57:6, 57:8, 57:10, 57:15, 57:16, 97:18</p> <p>weapon [7] - 20:4, 20:11, 82:12, 88:2, 88:3, 88:5, 88:10</p> <p>wear [2] - 130:18, 157:11</p> <p>Wear [2] - 130:21, 130:22</p> <p>wearing [8] - 11:23, 20:21, 82:1, 82:10, 82:16, 146:18, 162:12, 237:22</p> <p>weather [1] - 53:19</p> <p>weed [5] - 172:6, 172:7, 186:25, 187:10, 187:12</p> <p>Week [1] - 56:5</p> <p>week [14] - 29:1, 56:7, 56:11, 64:24, 118:11, 178:23, 224:14, 224:16, 227:19, 236:17, 238:11, 239:23, 243:9</p> <p>weeks [8] - 29:3, 56:5, 56:25, 57:4, 147:5, 154:16, 238:1, 242:5</p> <p>weigh [1] - 36:25</p> <p>weights [1] - 37:8</p> <p>welcome [1] - 33:12</p> <p>welfare [1] - 26:20</p> <p>well-respected [1] - 3:2</p> <p>West [10] - 1:25, 171:9, 179:12, 179:17, 179:21, 180:20, 184:3, 185:15, 207:25, 223:8</p> <p>west [3] - 61:17, 196:1,</p>

<p>196:2 Western [1] - 77:25 Westwood [5] - 182:8, 182:19, 182:23, 182:25, 183:4 Whaling [1] - 39:15 Whereabouts [7] - 122:13, 177:10, 177:19, 179:11, 183:14, 184:1, 206:11 whereby [1] - 220:21 Whereof [1] - 256:9 whip [1] - 188:25 whipped [1] - 189:1 white [2] - 195:2, 200:5 White [2] - 122:1, 163:10 Whole [1] - 176:12 whole [14] - 10:17, 28:14, 28:22, 44:3, 80:10, 81:18, 91:4, 100:21, 131:6, 229:2, 241:5, 247:19, 247:22, 247:25 wife [6] - 212:1, 212:3, 213:17, 221:16, 222:2 WILLIAM [3] - 120:19, 151:17, 255:12 William [3] - 120:23, 151:14, 151:21 Willie [3] - 122:2, 164:5, 256:4 WILLIE [1] - 1:7 willing [1] - 70:24 willingness [1] - 113:18 Wiltmore [2] - 162:20, 194:18 Winchester [1] - 169:25 wind [2] - 79:1, 205:7 Winters [14] - 135:24, 166:15, 166:16, 166:18, 166:22, 167:4, 167:12, 178:11, 178:18, 178:19, 178:23, 180:5, 199:23, 199:24 wire [4] - 82:1, 82:10, 82:17, 157:11 wired [1] - 12:17 wires [2] - 11:24, 20:20 wish [1] - 3:25 withdrawn [3] - 2:11, 2:14, 2:15 witness [50] - 5:10, 5:16, 14:20, 14:21, 14:23, 15:1, 22:9, 22:10, 22:18, 28:7, 46:10, 60:17, 62:6, 63:23, 76:19, 81:5, 84:9, 85:16, 85:18, 112:15, 114:6, 115:14, 118:11, 122:4,</p>	<p>126:21, 127:4, 132:19, 140:19, 146:8, 148:16, 151:12, 155:12, 162:14, 163:11, 228:8, 229:14, 229:15, 229:25, 231:2, 235:6, 235:8, 235:11, 235:16, 237:15, 242:6, 246:19, 252:20 WITNESS [46] - 28:11, 28:13, 33:14, 52:13, 120:19, 120:20, 120:23, 121:2, 123:1, 123:18, 123:20, 124:10, 124:12, 125:6, 128:24, 129:2, 129:4, 129:6, 129:9, 129:12, 129:15, 129:18, 129:20, 129:22, 131:17, 131:19, 131:21, 131:25, 132:3, 134:18, 134:20, 134:23, 134:25, 151:17, 151:18, 151:21, 176:5, 176:7, 186:5, 186:7, 186:9, 204:1, 204:4, 204:17, 255:4, 255:12 Witness [5] - 84:22, 152:19, 227:24, 241:10, 256:9 witness' [6] - 14:25, 15:2, 169:15, 186:12, 231:23, 243:4 witness's [1] - 14:17 witnesses [25] - 14:24, 16:14, 229:5, 230:14, 230:16, 230:20, 230:23, 231:3, 231:10, 232:14, 234:12, 234:13, 235:18, 235:23, 236:11, 236:13, 237:13, 238:11, 238:21, 238:25, 241:17, 241:23, 241:25, 242:2, 243:10 woman [8] - 13:10, 13:21, 42:22, 98:23, 109:6, 229:19, 233:20 women [3] - 236:16, 240:21, 243:8 won [1] - 79:16 Wooden [5] - 243:20, 245:19, 247:10, 247:11, 248:14 Woodlawn [2] - 122:14, 194:21 Woodmoor [8] - 146:21, 146:23, 162:4, 162:19, 162:21, 162:22, 194:17, 194:19 Woody [21] - 18:17, 18:24, 19:2, 32:2, 59:18, 59:25, 60:6, 60:8, 60:9, 60:19, 94:18, 94:21, 95:7, 95:22, 96:4, 96:5,</p>	<p>98:23, 103:25, 104:20, 104:25 word [14] - 19:21, 58:8, 67:2, 86:5, 86:6, 86:10, 86:13, 86:14, 86:18, 149:11, 150:1, 171:12, 216:20 words [9] - 27:14, 71:10, 92:24, 105:21, 131:23, 150:10, 227:14, 245:13, 248:17 wore [1] - 81:19 works [1] - 40:6 World [1] - 58:12 worn [1] - 120:11 worried [3] - 218:5, 229:18, 233:13 worry [1] - 48:12 wound [3] - 154:22, 155:3, 190:7 Wow [2] - 38:3, 54:12 wrap [2] - 229:24, 230:5 wrapped [1] - 229:18 write [14] - 15:10, 16:5, 16:18, 59:3, 66:23, 67:14, 67:15, 70:23, 87:6, 102:20, 102:22, 110:22 writes [1] - 110:16 writing [4] - 87:12, 102:17, 148:9, 148:13 written [3] - 14:15, 22:3, 78:7 wrote [35] - 14:7, 15:6, 15:13, 15:19, 15:24, 16:8, 22:10, 23:4, 23:23, 25:20, 27:13, 57:16, 57:18, 57:23, 59:11, 61:2, 67:9, 68:9, 68:10, 68:24, 69:7, 69:15, 70:5, 71:10, 78:5, 83:6, 83:14, 87:14, 89:10, 97:8, 97:14, 110:11, 110:13, 243:16, 252:9 Wyche [3] - 115:25, 119:23, 132:22</p>	<p>78:25, 99:22, 100:21, 129:1, 129:3, 129:5, 186:22, 193:16 years [31] - 44:21, 44:24, 45:4, 45:6, 45:8, 45:16, 46:3, 46:8, 46:18, 66:12, 78:20, 78:21, 79:2, 81:18, 108:24, 122:15, 137:25, 158:3, 158:10, 159:15, 159:24, 160:14, 161:16, 161:23, 163:3, 163:4, 167:22, 172:8, 172:15 years' [1] - 159:16 yesterday [21] - 2:6, 5:3, 6:11, 11:17, 11:21, 14:11, 15:6, 17:19, 18:20, 19:18, 28:18, 79:5, 83:13, 113:23, 115:17, 117:24, 118:2, 241:18, 243:1 Yom [1] - 236:5 York [11] - 122:16, 122:19, 171:16, 172:4, 173:1, 173:7, 173:12, 175:19, 176:1, 177:8, 244:2 young [7] - 163:23, 196:19, 229:19, 233:14, 236:16, 236:19 younger [1] - 162:25 Yourself [1] - 56:6 yourself [8] - 33:23, 34:7, 34:11, 44:7, 44:10, 92:23, 138:24, 178:6 yourselves [1] - 191:14 Yup [4] - 19:3, 38:4, 39:9, 104:5</p>
Z			
<p>Zajac [3] - 1:24, 256:3, 256:14 zoom [1] - 87:19</p>			
X			
<p>Xavier [2] - 184:10, 184:11 XI [1] - 1:11 XXXVII [1] - 1:11</p>			
Y			
<p>yard [2] - 53:8, 53:10 year [14] - 42:17, 42:20, 57:6, 59:16, 62:9, 78:18,</p>			